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PIPELINE SAFETY: PUBLIC AWARENESS AND EDUCATION

(111–132)

HEARING

BEFORE THE

SUBCOMMITTEE ON

RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

July 21, 2010

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Committee on Transportation and Infrastructure
Washington, DC 20515

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July 20, 2010

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials

FROM: Subcommittee on Railroads, Pipelines, and Hazardous Materials Staff

SUBJECT: Hearing on "Pipeline Safety: Public Awareness and Education"

PURPOSE OF THE HEARING

The Subcommittee on Railroads, Pipelines, and Hazardous Materials is scheduled to meet on Wednesday, July 21, 2010, at 2:00 p.m., in room 2167 of the Rayburn House Office Building to receive testimony on pipeline safety public awareness and education programs. The hearing is the fourth in a series of hearings that the Subcommittee will conduct on pipeline safety.

BACKGROUND

According to the Department of Transportation's (DOT) Pipeline and Hazardous Material Safety Administration (PHMSA), there are 173,500 miles of onshore and offshore hazardous liquid pipeline (about 200 operators) in the United States, which carry more than 75 percent of the nation's crude oil and around 66 percent of its refined petroleum products. Of the 173,500 miles of hazardous liquid pipeline, about 55,000 miles are major crude oil trunk lines, which range in diameter from about eight inches up to 48 inches. Associated with these trunk lines in several locations is significant crude oil tankage, and about 30,000 to 40,000 miles of crude gathering lines, which are smaller lines that gather the oil, gas, and water from many wells, both onshore and offshore, and connect to the larger trunk lines. In addition, there are about 95,000 petroleum product lines, flow lines/piping associated with well operations, and produced water pipelines (containing contaminated water following oil, gas, and water separation).

In addition to the 173,500 miles of hazardous liquid pipeline, there are 323,600 miles of natural gas transmission pipeline. Natural gas transmission pipelines move large amounts of natural gas to direct-served customers and local distribution systems' stations, referred to as "city gates", where the pressure is lowered for final distribution to end users, such as housing developments, through thousands of miles of small-diameter distribution pipelines. There are 2,036,800 miles of these natural gas distribution pipelines.

All in all, PHMSA oversees 2,534,000 miles of gas and hazardous liquid pipeline in the United States, which account for 64 percent of the energy commodities consumed in the United States.

I. PUBLIC EDUCATION PROGRAMS

The Pipeline Safety Improvement Act of 2002[1] required each owner or operator of a gas or hazardous liquid pipeline facility to carry out a continuing program to educate the public on the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event. The program also had to educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities. The law also required each owner or operator of a gas or hazardous liquid pipeline facility to review its existing public education program for effectiveness and modify the program as necessary. The completed program had to include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations, and had to be submitted to the Secretary of Transportation for review (or in the case of an intrastate pipeline facility, the appropriate State agency). The law also authorized the Secretary to issue standards prescribing the elements of an effective public education program.[2]

On May 19, 2005, PHMSA issued a Final Rule requiring each operator of a gas or hazardous liquid pipeline to develop and implement, within one-year, the written, continuing public education program required under the Pipeline Safety Improvement Act of 2002.[3] In the rule, PHMSA stated that all pipeline operators would have to follow the guidance provided in the American Petroleum Institute's Recommended Practice 1162 (API 1162), *Public Awareness Programs for Pipeline Operators,* which makes recommendations on what pipeline operators may want to consider including in their education programs.[4]

Congress required each owner or operator of a gas or hazardous liquid pipeline facility to review, within 12 months after the date of enactment of the 2002 law, its existing public education program for effectiveness and modify the program as necessary. However, in the 2005 rulemaking,

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[1] P.L. 107-355, Section 9.

[2] *Id.*

[3] *PHMSA: Pipeline Safety: Pipeline Operator Public Awareness Program,* 70 Fed. Reg. 2883 (May 19, 2005), http://edocket.access.gpo.gov/2005/pdf/05-9464.pdf.

[4] PHMSA has incorporated by reference all or sections of 69 separate industry standards into the pipeline safety regulations and 151 separate industry standards into the hazardous materials safety regulations, including standards developed by the American Gas Association (AGA) and the American Petroleum Institute (API). PHMSA has informed the Committee on Transportation and Infrastructure that government representatives serve on the committees that are responsible for developing the standards, and if PHMSA believes that some aspect of a standard does not meet PHMSA's directive, it will not incorporate the standard in the regulations. The standards that are incorporated by reference in the regulations are only available to the public (free of charge) for review in the DOT's reading room. Otherwise, they must be purchased from the standard developing organization.

PHMSA gave pipeline operators until June 2006 to review and modify their program and until June 2010 to determine their effectiveness.

The National Transportation Safety Board (NTSB) recently raised concerns about PHMSA's oversight of owner/operator public awareness and education programs. On November 1, 2007, a 12-inch diameter pipeline operated by Dixie Pipeline Company was transporting liquid propane when it ruptured in a rural area near Carmichael, Mississippi.[5] The resulting gas cloud expanded over nearby homes and ignited, creating a large fireball that was heard and seen from miles away. About 10,253 barrels (430,262 gallons) of propane were released. As a result of the ensuing fire, two people were killed and seven people sustained minor injuries. Four houses were destroyed and several others damaged. Although the pipeline accident's probable cause was the failure of a weld in the pipeline, the NTSB identified four safety issues, including three involving Dixie's public education program, specifically: (1) the adequacy of Dixie Pipeline Company's public education program; (2) the oversight exercised by PHMSA of the pipeline operator's public education and emergency responder outreach program; and (3) the emergency communications within the community.[6]

According to the NTSB, Dixie's public education program involved the distribution of safety literature to identified stakeholders, which included residents, businesses, emergency response agencies, excavators, and public officials. Dixie's plan called for mailing pipeline awareness literature to excavators and emergency response personnel in the counties in which the pipeline was located on an annual basis; providing literature to residents and businesses within one mile (5,280 feet) on either side of the pipeline once every two years; and providing literature to public officials within the county once every three years.

The pipeline company also relied on a contractor to send out the literature and, based on NTSB findings, the pipeline company did not exercise any oversight of the contractor to ensure that the mailings were accurate, nor did the company ever survey the residents or businesses about the content or effectiveness of the public education literature that they were provided.

The NTSB found that although an operator's public awareness program plan may meet API 1162 recommendations and Federal pipeline standards, there is no guarantee that implementation of the program is effective or that the operator is exercising sufficient oversight of its public awareness and education program.[7]

In October 2009, based on the NTSB findings, the Board sent a Safety Recommendation to PHMSA to initiate a program to evaluate pipeline operators' public education programs, including pipeline operators' self-evaluation of the effectiveness of their public education programs. PHMSA's response was to wait until after June 2010 to "have a better understating of the strengths and weaknesses of the existing public awareness requirements after reviewing operator effectiveness evaluations" (which were to be done by June).

---

[5] NTSB, *Pipeline Accident Report, Rupture of Hazardous Liquid Pipeline with Release and Ignition of Propane, Carmichael, Mississippi,* Pipeline Accident Report NTSB/PAR-09/01 (November 1, 2007).

[6] *Id.*

[7] *Id.*

The NTSB also found that the 911 operators in Carmichael, Mississippi were neither trained nor aware of the hazardous materials the pipeline was transporting. The NTSB made a Safety Recommendation to the API to revise API 1162 to explicitly identify 911 emergency call centers as emergency response agencies to be included in outreach programs under a pipeline operator's public education program.

II. TECHNICAL ASSISTANCE GRANTS

In the aftermath of pipeline tragedies in Bellingham, Washington, in 1999, and Carlsbad, New Mexico, in 2000, Congress created a program in the Pipeline Safety Improvement Act of 2002 to provide pipeline safety information grants to communities. Under the program, known as the Technical Assistance Grant (TAG) program, the Secretary of Transportation is authorized to make grants to local governments and not-for-profit community groups for technical assistance relating to the safety of pipeline facilities in local communities. Congress authorized $1 million for each of fiscal years 2003 through 2006 for the program (which was extended through 2010 in the Pipeline, Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act)[8]); any single grant made under the program was limited to no more than $50,000. Funding for the TAG program is authorized to be appropriated out of the General Fund and PHMSA is specifically prohibited from using the user fees collected from pipeline operators to fund the program.

From 2003 through 2006, Congress failed to specifically fund the program and, as a result, PHMSA refused to move ahead to implement it. To address the issue, a provision was inserted into the PIPES Act to withhold funding from other grant programs until PHMSA established procedures and criteria for initiating the TAG program.

Although funding was authorized for the program in 2002, Congress did not fund it until 2009. Section 5 of the PIPES Act required that at least the first three grants be "demonstration" grants in amounts not exceeding $25,000 each. PHMSA awarded the following four demonstration grants in May, June, and July 2009 for a total of $70,414:[9]

Recipient	**Amount**
St. Peters, Missouri	$8,784
Brookings County, South Dakota	$12,000
Ft. Worth, Texas	$25,000
Montgomery County, Virginia	$24,630

PHMSA then posted a solicitation for TAG applications on its website and convened a panel of stakeholders to evaluate the grant applications. The four-member stakeholder review panel was comprised of representatives from the National Association of Counties, the National Association of Pipeline Safety Representatives, the Washington State Utilities and Transportation Commission, and PHMSA. The panel reviewed 25 responsive applications, and PHMSA awarded a total of $963,921 to the following 21 recipients in September 2009:[10]

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[8] P.L. 109-468.

[9] PHMSA, Letter to Chairman James Oberstar (June 7, 2010).

[10] *Id.*

Recipient	Amount
Copper River Watershed Project, Cordova, Alaska	$48,380
Mesa, Arizona	$50,000
The Tides Center, Suisun City, California	$50,000
Lake Apopka Natural Gas, Winter Garden, Florida	$50,000
Blountstown, Florida	$50,000
Clearwater, Florida	$50,000
Elberton, Georgia	$50,000
Toccoa Natural Gas, Toccoa, Georgia	$50,000
Kansas Municipal Utilities, McPherson, Kansas	$50,000
Prestonburg City's Utilities Commission, Prestonburg, Kentucky	$26,000
City Utilities of Springfield, Springfield, Missouri	$41,383
Northern Plains Resource Council, Billings, Montana	$36,103
Nebraska City Utilities, Nebraska City, Nebraska	$16,500
Hamilton, Ohio	$50,000
Safety, Agriculture, Villages, & Environment, Inc., Kennett Square, Pennsylvania	$50,000
West Vincent Township, Chester Springs, Pennsylvania	$50,000
Bradford Glen Homeowners Association, West Bradford, Pennsylvania	$50,000
Oak Ridge Utility District, Oak Ridge, Tennessee	$50,000
Ft. Worth League of Neighborhood Associations, Ft. Worth, Texas	$48,305
The Association of Washington Cities, Olympia, Washington	$50,000
Pipeline Safety Trust, Bellingham, Washington	$47,250

III. NATIONAL PIPELINE MAPPING SYSTEM

Section 15 of the Pipeline Safety Improvement Act of 2002 required operators of pipeline facilities (except distribution lines and gathering lines) to submit to the Secretary of Transportation certain data appropriate for use in the National Pipeline Mapping System (NPMS), including: (1) geospatial data appropriate for use in the NPMS or data in a format that can be readily converted to geospatial data; (2) the name and address of the person with primary operational control to be identified as its operator; and (3) a means for a member of the public to contact the operator for additional information about the pipeline facilities it operates. Operators are required to update the information annually. The section also authorized the Secretary to provide technical assistance to State and local officials to improve local response capabilities for pipeline emergencies by adapting information available through the NPMS to software used by emergency response personnel responding to pipeline emergencies.

The terrorist attacks of September 11, 2001 placed additional security concerns on the U.S. pipeline infrastructure. As a result, PHMSA restricted access to certain NPMS data to Federal, State, and local government agencies (including emergency responders). However, PHMSA provides a webpage for the public to obtain State information, including who operates pipelines in their area and contact information for those pipeline operators. The website is searchable by State, County, or Zip code.

IV. PIPELINE DAMAGE PREVENTION

In 1998, Congress established minimum standards for State one call notification programs and authorized appropriations for Federal grants to improve State one call notification programs in the Transportation Equity Act for the 21st Century[11] for the purposes of: (1) enhancing public safety; (2) protecting the environment; (3) minimizing risks to excavators; and (4) preventing disruption of vital public services.[12]

In December 2002, Congress created the nationwide one call notification system in the Pipeline Safety Improvement Act of 2002, which directed the Secretary of Transportation and the Federal Communications Commission (FCC) to establish a 3-digit nationwide toll-free telephone number for excavators to call to dispatch companies that operate underground utilities in the area to mark the exact location of their utilities. The 2002 Act helps excavators avoid hitting the utilities when digging and any fatalities, injuries, environmental damage, or loss to critical infrastructure and services that could occur.

Both PHMSA and the FCC have taken steps since the enactment of the Pipeline Safety Improvement Act of 2002 to establish a universal 3-digit number that is recognizable to both excavators and the public. In April 2005, the FCC assigned "811" as the national abbreviated dialing code to be used exclusively for one-call notification centers. The official campaign to advertise "811" as the national "Call Before You Dig" number was launched in May 2007. PHMSA works with its stakeholder partners and in particular with the Common Ground Alliance (CGA), which is comprised of a number of hazardous liquid and gas pipeline companies, to promote the use of this number, both by providing funding for promotion and by including the "811" information in PHMSA outreach.

According to PHMSA's website, "811" has helped reduce the number of excavation damages caused by failure to locate underground utilities prior to digging from 57 percent of all damages in 2004 to 35 percent of all damages in 2009. Further, excavation damage continues to be a leading cause of serious pipeline incidents. More than 256,000 underground utility lines are damaged during excavation each year in the United States; 35 percent of those are due to homeowners and contractors not calling "811" before they dig. As shown below, the largest percentage of **all** serious pipeline incidents between 2004 to 2009 were caused by excavation damage. Corrosion remains the leading cause of all pipeline incidents for hazardous liquid pipelines.

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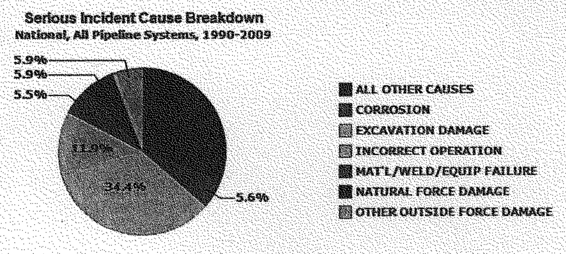
[11] P.L. 105-178.

[12] 49 U.S.C. § 6103.

ALL SERIOUS PIPELINE INCIDENT CAUSE BREAKDOWN FROM 2004-2009



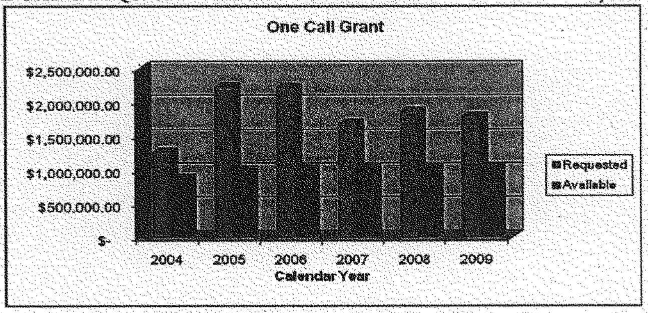
Source: PHMSA Significant Incidents Files February 17, 2010

In an effort to prevent excavation damage to pipelines, PHMSA has provided $500,000 annually to support CGA's efforts. PHMSA has provided over $2.2 million in funding assistance to support CGA's "811" advertising campaign since 2002.

State agencies who participate in the one call program established by PHMSA are also eligible to apply for one call grants on an annual basis. This grant program has a maximum amount request of $50,000 per State, designated to support initiatives which promote efforts specifically aimed at damage prevention. According to PHMSA, the agency received 37 applications for the "PHMSA Pipeline Safety Program One Call Grant" for 2009 and received 36 applications for 2010. PHMSA also states that no eligible State applicant was rejected in either year and the appropriation for these grants was $1,043,000 for 2009 and $1,084,900 for 2010.

According to PHMSA, as shown in Figure 1 below, the total grant dollar amounts requested by States has exceeded the appropriated funds each year since 2004. Although the amounts funded for one call grants has only increased by 3.5 percent over the last six years, the State-requested dollars, on average, have increased by 11.52 percent. PHMSA states that the number of requests for funds continues to increase each year, while the funding level remains flat.

TOTAL GRANT REQUESTS FOR ONE CALL GRANTS VS AVAILABLE FUNDS, 2004-2009



Source: PHMSA, *One Call Report Analysis & Recommendations.*

WITNESSES

The Honorable Cynthia Quarterman
Administrator
Pipeline and Hazardous Materials Safety Administration

Mr. Rick Kessler
Vice President of the Board of Directors
Pipeline Safety Trust

Mr. Bob Kipp
President
Common Ground Alliance

Mr. Peter O'Rourke
Director of Energy Programs
National Association of State Fire Marshals

Mr. Massoud Tahamtani
Director, Division of Utility and Railroad Safety
Virginia State Corporation Commission
On behalf of
National Association of Pipeline Safety Representatives

Mr. Sam Davis
General Manager and CEO
Lake Apopka Natural Gas District (Winter Garden, FL)
On behalf of
American Public Gas Association

Mr. Peter Lidiak
Pipeline Director
American Petroleum Institute

PIPELINE SAFETY: PUBLIC AWARENESS AND EDUCATION

Wednesday, July 21, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND
HAZARDOUS MATERIALS,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:36 p.m., in room 2167, Rayburn House Office Building, Hon. Corrine Brown [Chairman of the Subcommittee] presiding.

Ms. BROWN OF FLORIDA. The Subcommittee on Railroads, Pipelines, and Hazardous Materials will come to order. The Subcommittee is meeting today to hear testimony on Pipeline Safety: Public Awareness and Education. This hearing is the fourth in a series of oversight hearings the Subcommittee will hold as we look toward reauthorizing the Department's pipeline safety program.

The Pipeline Safety Improvement Act of 2002 required each owner or operator of a gas or hazardous liquid pipeline facility to develop and implement a public education program. Each program should educate the public on the possible hazardous associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event. The program also had to educate the public on the use of a One Call notification system prior to evacuation and other damage-prevention activities.

In addition, the 2002 law required each owner or operator of a gas or hazardous liquid pipeline facility to review its existing public education program for effectiveness and modify the program as necessary. The completed program had to include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations, and be submitted to the Secretary for review.

On May 5th, with the strong support of our Subcommittee, the House passed House Resolution 1278, a bill to designate the month of April as National Safe Digging Month. The Pipeline and Hazardous Materials Safety Administration, along with many States and stakeholders across our Nation, are working together to encourage all homeowners and contractors to call 811 before they dig.

According to PHMSA, the One Call notification system has helped reduce the number of incidents caused by excavation damage, from 57 percent in 2004 to 35 percent in 2009. Clearly these numbers speak for themselves. Indeed, it is extremely important to call 811, the Call Before You Dig line, and it is such an easy way for individuals and companies to save lives, the environment, our Nation's infrastructure, and even save money and investments.

We have undoubtedly made some positive steps in educating the public about the dangers of underground utilities; however, the verdict is still out on the operators' education program and whether or not they will be effective. I hope today's hearing will shed some light on the needs of the program and to ensure that these programs are working correctly, and that communities and first responders are getting the information they need to prepare for an accident.

With that, I want to welcome today's panelists and thank you for joining us. I am looking forward to hearing their testimony.

Ms. BROWN OF FLORIDA. Before I yield to Mr. Shuster, I ask the Members to be given 14 days to revise and extend their remarks and to permit the submission of additional statements and materials for Members and witnesses. Without objection, so ordered.

Ms. BROWN OF FLORIDA. I now yield to Mr. Shuster for his opening statement.

Mr. SHUSTER. I thank the Chairwoman, and welcome to the Administrator for being here again. We will have to set up a desk in the back for you so you don't have to traipse from downtown every week. It is good to have you.

I would like unanimous consent to submit my full statement for the record. I will keep it short because we have talked to the Administrator a number of times on these issues and others over the last year.

My one question I will have today at some point for you or for your staff to research it, there are some States, some government entities out there that have exempted themselves or are exempted from the 811, Call Before You Dig. And I just wondered what States were that? Is that actually happening? Because it just doesn't make any sense to me at all that anybody would exempt themselves because of something so simple, and something that could avoid accidents and bad situations.

So that is what I submit for the record for your staff, and maybe you can get back to me on that.

It is good to have you here today, and I yield back.

Ms. BROWN OF FLORIDA. I am pleased to introduce the Honorable Cynthia Quarterman, who is the Administrator of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration.

I want to welcome you, and I want to thank you. I think this is your fourth time coming before the Committee. So that is—I mean, thank you so very much, and the floor is yours.

TESTIMONY OF CYNTHIA QUARTERMAN, ADMINISTRATOR, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Ms. QUARTERMAN. Thank you for having me again, Chairwoman Brown, Ranking Member Shuster.

Mr. SHUSTER. Are you sure about that?

Ms. QUARTERMAN. Absolutely, it is my pleasure.

Members of the Committee, thank you for the opportunity to appear here today. Secretary LaHood, the employees of PHMSA and the entire Department share public safety as their top priority. The Department holds a strong commitment to preventing spills on all pipelines through regulation, oversight, public awareness and education.

PHMSA works with a broad stakeholder community to shape many of our public awareness, education and damage-prevention initiatives. With the help of its stakeholders, PHMSA has made great progress in reducing the number of serious pipeline incidents by 50 percent over the last 20 years. PHMSA aims to continue this downward trend in pipeline incidents through increased efforts in outreach and public awareness programs, State funding and enforcement.

For years PHMSA has been at the forefront of finding effective solutions to prevent excavation damages to underground pipelines. Since 2002, PHMSA has provided over $2.2 million in funding assistance to the Common Ground Alliance to support the 811 educational outreach campaign. This year the United States Senate, the House of Representatives and the Transportation Secretary Ray LaHood all promoted the importance of calling before you dig by designating April as National Safe Digging Month, and I thank this Committee for your work on that.

In addition, at PHMSA's urging, 40 States, including those represented by Members of this Subcommittee, also followed suit with a statewide Safe Digging Month proclamation. In support of these efforts, PHMSA is encouraging States to help spread the damage prevention message. PHMSA's One Call and State Damage Prevention grant programs fund improvements in State and community damage-prevention efforts. Since 1995, PHMSA has awarded over $14 million in One Call grants. An additional $4 million in State Damage Prevention grants have been provided to States since 2008.

Accompanying its grant programs, PHMSA is preparing local officials to be public education resources within their communities and helping citizens learn how they can protect themselves and pipelines.

PHMSA has implemented many nonregulatory programs that contribute to public awareness, including the National Pipeline Mapping System, the Community Assistance and Technical Service Representatives, the Pipelines and Informed Planning Alliance, operator public awareness programs, Technical Assistance grants, and direct access to information on its stakeholders communication Web site.

In addition, PHMSA's relationship with the National Association of State Fire Marshals and the International Association of Fire Chiefs has resulted in the availability of training materials that assist first responders in responding safely and efficiently to and effectively to pipeline emergencies.

While PHMSA has accomplished many goals with its State partners and other stakeholders in pipeline safety, it is important that States continue to recognize the role that effective and fair enforcement plays in reducing excavation damage to underground infrastructure. PHMSA is developing a rulemaking to pursue administrative civil penalties against excavators who violate damage-prevention requirements and damage a pipeline in the absence of effective enforcement by the State where it occurred. The hope is that this rulemaking, along with all the current public awareness initiatives, will highlight the importance for all stakeholders to call 811 before digging, to respect the marks identifying the locations of underground utilities, and to practice safe digging techniques.

PHMSA looks forward to increasing its efforts in national and State damage prevention and public awareness programs, and working with Congress to yield further results in pipeline safety.

Thank you. I would be pleased to answer any questions you may have.

Ms. BROWN OF FLORIDA. Thank you.

Mr. Walz——

Mr. WALZ. Thank you, Madam Chair.

Ms. BROWN OF FLORIDA. —for opening statements and any questions that you may have.

Mr. WALZ. Thank you very much, and I thank the Ranking Member.

Ms. Quarterman, I, too, want to express my thanks. You have been here, and incredibly accessible to each of us, to help us learn about this important issue. I look forward to every one of these. I learn something new. I think this issue of educating the public is—we have made strides in, there is no doubt about it, from the One Calls and the institute. Our pipeline operators have made a great effort of that.

I just have a couple of questions as we are trying to get this out and let the public know on this. I am going to go down this line of questioning since 2002 in the Pipeline Safety Improvement Act, and there were some things that were supposed to have happened with the Notice of Proposed Rulemaking. And one of the questions we had in talking with the staff, did PHMSA publish the recommended practice in the Notice of Proposed Rulemaking or in the rulemaking docket so the public could see that?

Ms. QUARTERMAN. And now you are referring to the public awareness?

Mr. WALZ. That is right.

Ms. QUARTERMAN. That rulemaking process was developed with input by PHMSA and NAPSR, which are our State partners. During the rulemaking process I believe that it was made available. The recommended practice was actually published by the API, the American Petroleum Institute, and they made it available to the public on their Web site during that period for free.

Mr. WALZ. If I am right on that, there are 69 API standards in pipeline safety and 151 standards in HAZMAT. We looked into it. It costs $93 per standard to see that. So for the public to get it, it would be several thousand dollars.

Ms. QUARTERMAN. It would be quite expensive for them to get all the standards.

Mr. WALZ. Well, how do we do that if this is about educating them and about making it accessible? Can we do better on that regard?

Ms. QUARTERMAN. Well, I think this is a governmentwide issue, to be candid with you. There is a statute that exists, the Congress promulgated, encouraging government agencies to use these national standards, these industry standards. And the administration executive branch through OMB has issued several guidelines encouraging, again, the Federal Government to use and adopt these standards. There are, as you mentioned, several within PHMSA that have been adopted. We are in quite a few working groups right now developing many national standards. However, as——

Mr. WALZ. Do we need to do something to help? Because I don't think anything sinister in this; I think it is just a case of trying to disseminate it to the public in the easiest, most cost-effective manner. If it is a transparency issue to try and get it out, and if it is about educating them, is there anything we can do that you can see that could help do that? Because in the case here, I don't have any particular question towards the standards themselves; it is just about the access to the public to get them.

Ms. QUARTERMAN. Well, it might be useful to have a panel, should we say a committee, put together by Congress to look into this issue how we might make these standards more publicly available, because I agree with you, it would be great if they were more accessible to everyone.

Mr. WALZ. I appreciate that.

I have no further questions, and I yield back, Madam Chair.

Ms. BROWN OF FLORIDA. Mr. Shuster.

Mr. SHUSTER. Thank you.

I just wanted, again, to reiterate my first questions. I don't know if you have the answer to it, but if staff could send this over, you know, what groups, who has exempted themselves from the 811, I would certainly like to know that. If you get that to me, that would be great.

The second question or concern of mine that the Pipeline Safety Trust claims that they helped PHMSA develop the evaluation criteria used to select recipients for your Technical Assistant grants, and the Pipeline Safety Trust was awarded one of these grants. And is that a conflict of interest for a group to participate in the criterion evaluation and then receive funding?

Ms. QUARTERMAN. Well, I am not aware of that situation. I—that would be something that would be of concern to me, I would have to say. But I don't know the specifics of that situation. I would have to go and look at that.

Mr. SHUSTER. Sure.

Ms. QUARTERMAN. As to the exemption question, there are many States that have in it their laws exemptions to the One Call law. It is my belief that those exemptions should be eliminated. Very recently the State of Maryland was adopting a new One Call law, and there was an exemption planned for the Department of Transportation. We did have conversations with them, and that exemption was removed from the law.

Different States have different exemptions. Some of them relate to farmers, some of them relate to the Department of Transportation, others relate to the railroads. I would like to see all of those exemptions removed.

Mr. SHUSTER. And I guess my concern is does anybody really not make the call that you know of? There may have been exemptions in there, and I am not a big proponent of the Federal Government having sweeping laws necessarily, but it just seems to me to be just plain stupid to go digging without calling someone and saying, is there a gas line, or is there a cable or something here.

If you could get back to me, I would appreciate it.

Ms. QUARTERMAN. Unfortunately there were three incidents in the past month where four people were killed. Now, we are still in the process of investigating that. We don't know if everyone called in all of those instances, and perhaps the markings were wrong. That is still under investigation. But in my view, all of those deaths were absolutely preventable if the One Call law was complete, and people did everything that they were responsible for doing.

Mr. SHUSTER. Thank you.

Ms. BROWN OF FLORIDA. Mr. Nadler.

Mr. NADLER. Thank you.

I want to follow up on some of the questions asked by Mr. Walz. It seems to me it is an awfully closed-door process in which, if I want to know what the regulations are, I read the PHMSA regs, and it refers me to a private organization's regs, which will cost me money to get, and a large amount of money.

Secondly, the regulations are developed by these private organizations with a PHMSA representative, but the public is excluded; am I correct?

Ms. QUARTERMAN. Well, usually both at the State and PHMSA representatives are involved in these——

Mr. NADLER. The State and PHMSA representatives, but if I want to go there and observe——

Ms. QUARTERMAN. The public could be involved in the process if they wanted to, or if they wanted to become a part of the process, but, you know, from our perspective our responsibility is to represent the public.

Mr. NADLER. But none of the proceedings are published. None of the proceedings or minutes of the meetings are published. If you want to see the—no drafts are published, although a draft may be published, but refers to the industry group, the API, for instance, regs or standards, which you have to purchase at an expensive amount, which really closes out everybody, correct?

Ms. QUARTERMAN. With respect to the particular standard that we are referring to here, it was made public, but that is not——

Mr. NADLER. No, no, no. When you say it was made public, it was made public only if I purchase the stuff from the API.

Ms. QUARTERMAN. Not with respect to the public awareness regulation. This was made public on the API Web site at the time the regulation was——

Mr. NADLER. It was made public for a short period of time during the comment.

Ms. QUARTERMAN. Right.

Mr. NADLER. I can't get it. If I don't have a lot of money, I can't get it. I can't read the Federal Register and get it.

Ms. QUARTERMAN. My understanding is it is no longer publicly available, so if you wanted it now, you would have to purchase it.

Mr. NADLER. What excuse is there for keeping this that way? Why shouldn't this all be public? Why should I have to purchase it?

Ms. QUARTERMAN. Well, PHMSA can't make that happen.

Mr. NADLER. Excuse me, I think PHMSA can. The law says that—the law you quoted is that you are encouraged to involve these private groups, but you are not required to. And I think that you could require that all this be public.

Ms. QUARTERMAN. I would have to talk to my lawyers about that. I think they might disagree with that, but we would be happy—if we could force it to happen, we would do it.

Mr. NADLER. Would you get back to us with your lawyers' opinion on that? Because I think it is within the jurisdiction of the agency to require that this be available. Certainly the normal—the normal proceeding is that a regulatory agency such as PHMSA can make your own regulation. That regulation could—with a proper rulemaking procedure, that regulation could provide that all of these regulations be available publicly, and that insofar as the regulation references an API or some other private thing, that that be available publicly, in fact that it be right there. I see no reason why you couldn't do that.

Ms. QUARTERMAN. We will investigate it.

Mr. NADLER. OK. Well, I hope you do investigate it, because when the agency issues a rule that says that the programs have to be based on a private group, in this case API's recommended practice 1162, that recommended practice 1162 ought to be quoted in its entirety right there. Anything else is really excluding the public, and especially in this time period when there is a lot of, shall we say, skepticism about private groups, especially groups dealing with safety in the aftermath of BP and everything else. To require someone who wants to know what the safety regulations are to pay $100,000, which is what it would take to get most of this information, might lead some people to think that not everything is totally open.

So I hope you will take this under advisement and will get back to us either stating that you will institute a rulemaking procedure to make it all open and available on the Federal Web site or whatever without having people having to come up with money, or give us a good legal reason, a real legal reason, why it is not within the jurisdiction of the agency to do, which I believe it is.

Ms. QUARTERMAN. Well, I would certainly be supportive of having everything available to the public for free. So if it is feasible, then it will happen.

Mr. NADLER. Very good. Thank you.

Ms. BROWN OF FLORIDA. Mr. Schauer.

Mr. SCHAUER. Thank you, Madam Chair. Thank you for being with us.

Just want to talk a little bit more about the standard for public education programs and involvement of industry representatives versus public representatives. And I know in June of 2004, PHMSA published the Notice of Proposed Rulemaking requiring each pipeline operator to develop and implement proposed education programs based on provisions of the American Petroleum Institute's recommended practice 1162. It sounds like a multi-industry task force was comprised with representatives of hazardous liquid, gas transmission, gas distribution, pipeline operators, trade organizations. So I guess the real question is was there an opportunity for the general public to be a part of that standard? Has PHMSA voted on the final standard? And what was the ratio of PHMSA representatives on this multi-industry task force compared to industry representation?

The point is if these are programs to educate the public, we need to make sure that the public is there at the table and this, again, isn't something that is just designed by industry. So I am just curious about your response to that.

Ms. QUARTERMAN. I don't know the numbers of people from each part of the public, or private or government. That is something we can look up and get back to you on, absolutely. And I agree the public should be represented, and it is PHMSA's role to represent the public.

Mr. SCHAUER. Well, if we sort of think about this, and I think sometimes the government forgets that, and sometimes industry forgets, industry is there to make a profit, certainly you would think that acting in a safe, responsible manner would be good for their profits. But as we saw from BP, they cut corners and put profits before safety.

We need to make sure that the end users, consumers, the public is really engaged and certainly in these public education programs aimed at safety. So I would urge you to take that into account in future rulemaking.

Thank you.

Thank you, Madam Chair. I yield back.

Ms. BROWN OF FLORIDA. Ms. Napolitano.

Mrs. NAPOLITANO. Sorry about that, Madam Chair.

I had a couple of questions, Ms. Quarterman, in regard to pipeline oil safety in my district, specifically to a major oil pipeline and oil tank leak that has been under investigation and continued remediation for decades. Polluter: the Air Force.

In your experience does the public sector or private sector oil operators do a better jobs of education, protection and remediation? What factors contribute to this? And what can we do to be able to impress upon any of the services how critical it is to clean up their own mess?

Ms. QUARTERMAN. I am not familiar with the particular instance that you are—I think I have heard something about it. I believe it is the military——

Mrs. NAPOLITANO. Correct. It is a transfer station. It is transportation related.

Ms. QUARTERMAN. I am sorry, could you repeat your question exactly?

Mrs. NAPOLITANO. Well, the public sector, the private sector, all operators do a better jobs of education, protection and remediation. What contributes to this? I know, because I have been on there particular issue for over 20-some-odd years, and it is like pulling hen's teeth to get the Armed Forces to do anything that is going to protect the health and safety of the community. This is a proven carcinogen in that particular leak.

Ms. QUARTERMAN. Well, with respect to public awareness, our regulations require that operators of hazardous liquid pipelines put in place public awareness programs that inform the public about the location of pipelines or storage facilities, what products are there, what they should be looking for in case of a leak, how they should respond if something were to happen.

Mrs. NAPOLITANO. Would you hold that thought?

Ms. QUARTERMAN. Sure.

Mrs. NAPOLITANO. Because it took us about 10 years to try to get an open meeting with the Department of Defense on this particular tank farm. They would not even allow us to go on site to inspect, or anybody else. So maybe apprise to the public sector, but not— I mean, to the private sector but not to the public.

Ms. QUARTERMAN. I don't know if we have oversight of this particular facility if it is defense related——

Mrs. NAPOLITANO. It was.

Ms. QUARTERMAN. —as opposed to transportation related.

Mrs. NAPOLITANO. Correct.

Ms. QUARTERMAN. But——

Mrs. NAPOLITANO. Maybe I can take it up with you later. That is not a problem.

The second one is the remediation of selenium that is being found in some of the discharges to the remediation wells and has forced the shutdown of 13 of the 23 remediation wells.

But what can the oil companies and the pipeline companies do when there is no course to be able to continue their remediation?

Ms. QUARTERMAN. Remediation of?

Mrs. NAPOLITANO. Selenium and carcinogens.

Ms. QUARTERMAN. Well, they should—obviously they areresponsible for cleaning up those spills under some Federal regulation.

Mrs. NAPOLITANO. Maybe I can take that up with you and get further information.

Ms. QUARTERMAN. Yes.

Mrs. NAPOLITANO. The other question that I had was the following a serious pipeline accident in 2007, NTSB made a safety recommendation to PHMSA to initiate a program to evaluate pipeline operators' public education programs, including pipeline operation self-evaluation of effectiveness of the public education programs. It is our understanding that PHMSA wanted to wait until after of June 2010 this year, which has already passed, to have a better understanding of the strengths and weaknesses of the existing public awareness requirements after reviewing operator effectiveness evaluations.

Has PHMSA reviewed the operation effective evaluations, and does PHMSA plan to respond to NTSB safety recommendations, and can this Subcommittee be made aware of those findings?

Ms. QUARTERMAN. Absolutely we are in the process of responding to that NTSB recommendation. There was an evaluation work group that was held on June 30th of this year to go over what the States and PHMSA together should do going forward in terms of evaluating the public awareness programs that the companies have had now for years of use of their public awareness programs. We would like them to do an evaluation of what they have done so far, and then beginning in the fall, we will start with our State partners inspecting the evaluation that the companies have done of their public awareness program. We are already on—whenever we go out for an inspection, we do an evaluation of their public awareness program, but this is sort of an add-on, sort of a look-back of what they have done so far.

Mrs. NAPOLITANO. Is this self-reporting?

Ms. QUARTERMAN. Well, they do an evaluation, and we will review what they have done.

Mrs. NAPOLITANO. But do you actually physically look at the actual delivery of that program delivery?

Ms. QUARTERMAN. Well, we look at the plan, we look at the evaluation of the plan, and then we determine whether or not to give them a violation based on what they have or have not done. Now, if there has been an incident where it is obvious that something in the plan failed, and that may be the case in some of the recent incidents where there were problems with public awareness plans, then they would, of course, get a violation as a result of that.

Mrs. NAPOLITANO. Thank you, Madam Chair.

Ms. BROWN OF FLORIDA. Thank you.

Ms. Titus.

Ms. TITUS. Thank you, Madam Chairman, and thank you for joining us again today.

I just want to ask you a few questions about the Technical Assistance Grant program. As I understand it, that was part of the original Pipeline Safety Act of 2002, but the first round of grants didn't go out until September of 2009, but when they did go out, they were successful. A number of independent communities across the country were able to hire technical advisors to help them assess just what the pipes were that were running through there, how to keep them safe, and what to do in case they weren't.

I also understand now you are about to do maybe a second round of these grants. I wonder if you could just address for us some questions about how this process is going to work. Some of those questions you might consider, are we sure we have the funding, is that clear? Are we going forward with the funding? It is going to be reauthorized first?

Second, as you look at the second round, are you considering any alterations to the application process, like maybe raising the cap on the amount of the grants or removing the limitation on funding sources for the grant? Is that part of the process?

Third, is there any better effort to do public outreach and promotion so people know that these grants are available?

And finally, I think this is going to be brought up in later testimony, but since it is the reverse order, I will ask you now. There is some rumor out there that some pipeline projects are going to be part of some of the applications from municipal governments where the law strictly says that those kinds of pipeline projects are not what is intended to be funded by this money.

If you could address those things for us generally, I would appreciate it.

Ms. QUARTERMAN. Absolutely. The Pipeline Safety Improvement Act of 2002 did authorize the TAG, Technical Assistance Grant program, we call them TAG grant programs. The first appropriations for that program were not until fiscal 2009. There were some initial monies that were able to be brought to bear to do some initial pilot projects. Beginning in fiscal 2009, we actually got a million dollars appropriated for that program, and I think the limitation is

$50,000 per grantee. The first round, close—there was a million dollars appropriated to the program. Close to a million dollars was made available for grantees in that program.

We are right now in the middle of the next year's review for fiscal year 2010. We have received—I forgot how many, but numerous applications for that program, and we are in the process of reviewing those applications for announcements before the end of the fiscal year. So we are in the middle of the process right now, so I can't tell you about any particular awardee at this point.

Ms. TITUS. Well, is it a major consideration of yours to be sure that these awards are in keeping with the original——

Ms. QUARTERMAN. Oh, absolutely. They won't be going——

Ms. TITUS. And do you have any concern about the future funding of these grants?

Ms. QUARTERMAN. It is in the President's budget for fiscal year 2011. Obviously we are waiting to see what happens with that, but it is in the President's request.

Ms. TITUS. Thank you, Madam Chairman.

Ms. BROWN OF FLORIDA. I just have a follow-up to that question also. How much—did you say those grants were for a million dollars, the awardees?

Ms. QUARTERMAN. There was a million dollars appropriated for the grants, and I think each of them could be up to $50,000 apiece. And the final award was 900-something thousand dollars, so close to a million dollars.

Ms. BROWN OF FLORIDA. That seems to be a very small amount considering the magnitude of the program, the need for the program. Did you all request more?

Ms. QUARTERMAN. We—I wasn't here then, so I can't really answer that question. I can research it for you. I don't know what was requested.

Ms. BROWN OF FLORIDA. Well, how effective do you think the program is? Have you all evaluated the program?

Ms. QUARTERMAN. We haven't evaluated it. So far it has only been through 1 fiscal year, and I haven't had a summary of what the results were so far.

I think the idea for it is fantastic. And it may be, as the Member suggested, we need to do more to publicize it to get more communities to come forward and ask for monies, and we will work on that, absolutely.

Ms. BROWN OF FLORIDA. You said have you received numerous applications, though?

Ms. QUARTERMAN. Yes, we have.

Ms. BROWN OF FLORIDA. Do you know how many applications you all have received?

Ms. QUARTERMAN. I know in fiscal 2009, we had 21 grantees. For this fiscal year I don't know how many applications we have gotten, but I know there are a lot.

Ms. BROWN OF FLORIDA. OK. On the second panel that is coming up, there was a discussion about the Governors-appointed Pipeline Safety Advisory Committee to increase public awareness and education, and it seems as if your agency has not promoted it. Can you tell us why, since it was part of a 2002 authorization?

Ms. QUARTERMAN. I am sorry, I am not familiar with that. I will have to get back to you on that.

Ms. BROWN OF FLORIDA. OK. Well, would you all get back to us in answer to that?

Ms. QUARTERMAN. Yes, sure.

Ms. BROWN OF FLORIDA. How many inspectors does DOT have on duty today to conduct inspections?

Ms. QUARTERMAN. We have 135—under the authorization, we have slots for 135 inspection enforcement personnel. We actually have in our budget 136 personnel. I believe we have 102 on board, and have offers outstanding or accepted offers to another 18 or so, and then another 6 are in interview, but that information is probably about a month old. So hopefully we will have even more people coming in.

Ms. BROWN OF FLORIDA. Has PHMSA taken any enforcement action against pipeline operators for failing to implement an effective public education program as prescribed by the regulations?

Ms. QUARTERMAN. I would have to get back to you on that as well.

Ms. BROWN OF FLORIDA. Also, have any States taken any enforcement action against an operator for failing to comply with the Federal regulations regarding public awareness programs. So would you have to get back with me on that also, I guess?

Ms. QUARTERMAN. Yes.

Ms. BROWN OF FLORIDA. Are there any additional questions?

Do you have any additional comments that you want to make?

Ms. QUARTERMAN. If I might, I would like to recognize the staff of PHMSA, the pipeline staff. At the end of the hearing several months ago now, I called to the attention the career folks who work for me, and I just want to say that we have a wonderful group of career people who are extremely dedicated to pipeline safety working for us, and I just want to let them know that we appreciate all they have done, and I appreciate it.

Ms. BROWN OF FLORIDA. Well, thank you for your leadership. This is a trying time for us, making sure that we be very proactive in dealing with our responsibilities. I don't want what happened with the Horizon Deepwater to happen to our Committee and we are wondering, oh, we should have had this in place, or we should have made sure that we had the regulations in place or the inspections. So I appreciate your forward thinking and working with the Committee. I am sure we will present to the Congress a reauthorization bill that will cover the things that we need to cover in our reauthorization. So thank you for your leadership.

Ms. QUARTERMAN. Thank you.

Ms. BROWN OF FLORIDA. Panel 2.

I am pleased to introduce the second panel of witnesses. We have with us Mr. Rick Kessler, vice president of the Board of Directors of the Pipeline Safety Trust.

And we have Mr. Massoud Tahamtani. Help me out here; what is your name?

Mr. TAHAMTANI. Tahamtani.

Ms. BROWN OF FLORIDA. Tahamtani.

Mr. TAHAMTANI. Tahamtani.

Ms. BROWN OF FLORIDA. Welcome. Director of the Division of Utilities and Railroad Safety of the Virginia State Corporation Commission, on behalf of the National Association of Pipeline Safety Representatives.

And we have Mr. Bob Kipp, president of the Common Ground; and Mr. Peter O'Rourke, Director of Energy Programs for the National Association of State Fire Marshals. And we have Mr. Sam Davis, general manager and CEO of the Lake Apopka—in my area—Natural Gas District in Winter Garden, Florida, on behalf of the American Public Gas Association. And finally, Mr. Peter Lidiak—what is that last name?

Mr. LIDIAK. Lidiak.

Ms. BROWN OF FLORIDA. OK. Pipeline director of the American Petroleum Institute.

Welcome. We are very pleased to have all of you here with us this afternoon. But first let me remind each of you under the Committee rules oral statements must be limited to 5 minutes, and your entire statement will appear in the record, and, of course, we will have time for questioning.

Mr. Kessler.

TESTIMONY OF RICK KESSLER, VICE PRESIDENT OF THE BOARD OF DIRECTORS, PIPELINE SAFETY TRUST; MASSOUD TAHAMTANI, DIRECTOR, DIVISION OF UTILITY AND RAILROAD SAFETY, VIRGINIA STATE CORPORATION COMMISSION, ON BEHALF OF NATIONAL ASSOCIATION OF PIPELINE SAFETY REPRESENTATIVES; BOB KIPP, PRESIDENT, COMMON GROUND ALLIANCE; PETER O'ROURKE, DIRECTOR OF ENERGY PROGRAMS, NATIONAL ASSOCIATION OF STATE FIRE MARSHALS; SAM DAVIS, GENERAL MANAGER AND CEO, LAKE APOPKA NATURAL GAS DISTRICT, WINTER GARDEN, FLORIDA, ON BEHALF OF AMERICAN PUBLIC GAS ASSOCIATION; AND PETER LIDIAK, PIPELINE DIRECTOR, AMERICAN PETROLEUM INSTITUTE

Mr. KESSLER. Chairwoman Brown, and Ranking Member Shuster, Members of the Subcommittee, good afternoon, and thank you for allowing me the honor of testifying at this hearing. My name is Rick Kessler. I am here today in my role as vice president of the Pipeline Safety Trust, the Nation's leading nonprofit organization dedicated to improving the safety of our country's pipeline system.

Overall we believe the public has the right to know about the safety of pipelines affecting communities, and that providing this information is good for the public, good for the environment, and ultimately good for the pipeline companies who will benefit from having better informed citizens living near their facilities. Greater transparency in all aspects of pipeline safety will lead to increased awareness, involvement, review, and ultimately safety. That is why we strongly believe Congress should make citizen right-to-know provisions a top priority for inclusion in the next reauthorization.

Over the last 8 years, PHMSA has done a pretty good job of increasing transparency for many aspects of pipeline safety. One of the true successes has been PHMSA's rapid implementation of the 2006 Act's enforcement transparency section. Now affected communities can log on to the PHMSA web site and review enforcement actions regarding local pipelines.

We would like to see PHMSA go even farther to create a web-based system to allow public access to specific inspection information about pipelines, including when PHMSA inspected a given pipeline, types of inspections performed, what was found, and how concerns were addressed. Just as Congress required PHMSA to institute enforcement transparency in the 2006 Act, the Trust urges Congress to require similar inspection transparency this year. But other information must be more readily available, too, including information about high-consequence areas and emergency response plans.

In response to the latter, while onshore oil pipeline operators are required to prepare spill response plans, to our knowledge, the plans are not public documents and certainly aren't easily available documents. Further, the process to develop these plans is closed to the public. This must be fixed.

The BP Gulf of Mexico disaster illuminated not only the last point, but also the dicey practice of Federal agencies incorporating into the regulation standards developed by the very entities they oversee. Like MMS, PHMSA incorporated into its regulations standards developed by organizations made up in whole or in part of industry representatives, approximately 85 in all.

Clearly the pipeline industry has considerable knowledge and expertise in certain areas that must be tapped. They must be tapped to draft standards that are technically correct and can be implemented efficiently. But when a regulatory agency needs to adopt industry-developed standards 85 times, it's kind of a red flag that the agency lacks the resources and expertise to develop these standards on its own.

Even more outrageous, once the standards are incorporated into Federal taxpayer-funded regulations, they remain the property of the standards-setting organization. So if a citizen wants to review the standards in a U.S. Government regulation, they actually have to buy a copy from the private organization that drafted them. Prices for these documents, which again are part of a U.S. Government taxpayer-financed regulation, range from just below $100 to nearly $1,000. It is just wrong, and, of course, the expense discourages citizen review and participation in the process.

Now, I know you share our view, Madam Chair, as do many of your colleagues on both sides of the aisle and Administrator Quarterman. We think this can easily and must be remedied in statute in the next reauthorization.

Moving on, over the past year and a half, PHMSA finally started implementing the Community TAG Grant program authorized in 2002. Overall, despite the unacceptably long delay in implementation, we view the first round of this new grant program generally as a huge success. However, ongoing funding for these grants isn't clear, so the Trust asks the Committee to ensure the reauthorization of these grants, consider raising the cap on the amount of an individual grant, remove the limitation on funding sources for the grants, and, most importantly, do whatever is necessary to ensure funds are appropriated.

Additionally, there were mistakes made by PHMSA with awarding grants not meeting the congressional intent of the program either in terms of qualifying recipients or use of the funds. In creating the grant program, Congress explicitly excluded for-profit entities to ensure the program's monies reached its intended audience of local governments and nonprofit citizen groups, not pipeline companies. Congress also specifically defined and limited the use of those funds to scientific analysis and promotion of public participation.

That some municipally owned companies are trying to exploit a possible loophole in the law to subsidize their own operations unfairly at the expense of local governments, legitimate citizen groups, and competitor companies disqualified from receiving such funding is shameful. It is sad, but we have to ask Congress to clarify in statute that this grant program is not to fund, and it was never supposed to fund, the activities of any pipeline operator, public or private.

I see my time is running out, so let me just conclude by thanking you again. I look forward to answering your questions, and also look forward to working with this Committee, both sides of the aisle, and Congress on the authorization.

Ms. BROWN OF FLORIDA. Next.

Mr. TAHAMTANI. Madam Chair Brown, Ranking Member Shuster, Members of the Committee, thank you for the opportunity to discuss our role in support of pipeline safety. I am testifying today on behalf of the National Association of Pipeline Safety Representatives. NAPSR, for short, is a nonprofit organization of State pipeline safety personnel. As partners of the PHMSA, we serve to support, encourage and enhance pipeline safety in the country.

Since the Pipeline Safety Act was signed into law in 1968, States have been acting as certified agents for implementing and enforcing Federal safety regulations. State pipeline safety personnel represent more than 80 percent of the State and Federal inspection workforce. State inspectors are the first line of defense at the community level to promote pipeline safety, underground utility damage prevention and public awareness regarding gaseous and liquid pipeline systems.

In their role as inspectors, the State pipeline safety personnel interact with a variety of communities which may be affected by the pipelines of more than 3,000 operators subject to the requirements of the public awareness program regulations.

I have submitted written testimony for the record describing the role of the States in helping to enhance pipeline safety and the status of our efforts in the areas of education and public awareness.

Briefly, States have been engaged in two distinct efforts: One, education of the public about gas and liquid pipeline safety and how to prevent excavation damage to these pipelines; and two, inspection of operators' public awareness programs, plans and results. We are also continuing to work with PHMSA in putting together inspection protocols to use in determining the effectiveness of these programs.

As you know, excavation damage is the number one cause of pipeline accidents. With the aid of the Federal One Call and the State Damage Prevention grants, the States have been very active in helping to educate those who excavate near buried pipelines and other facilities. These activities include promoting the 811 nationwide number to be called before any excavation.

In my own State of Virginia, we routinely sponsor public service announcements about excavation damage prevention and offer mandatory education programs as part of the enforcement of the Virginia damage prevention law. In addition, we annually distribute hundreds of thousands of educational materials ranging from coloring books for young Virginians to safe digging manuals for professional excavators.

With respect to operators' public awareness programs and results thus far, the States have primarily concentrated on determining the adequacy of these programs. In order to evaluate if these programs are effective, States and PHMSA are putting together inspection forms and associated guidance for use by our inspectors. In crafting these documents, we are addressing certain issues to ensure effective evaluation of these programs.

In short, we believe the requirement for pipeline operators to have effective public awareness program is good, and it has already shown some results. With our Federal partner we have mapped out a plan to begin verification of these plans as early as this fall. At this point NAPSR believes added legislative mandates in this area are not warranted and could create additional obstacles for operators to implement their program.

Thank you, Madam Chairwoman, and I will be glad to answer any questions.

Ms. BROWN OF FLORIDA. Mr. Kipp.

Mr. KIPP. I am pleased to appear before you today to represent the CGA, a nonprofit organization dedicated to shared responsibility and damage prevention to underground facilities. The CGA now counts more than 1,400 individuals, representing 16 stakeholder groups, and nearly 200 member organizations. In addition, our 60 regional partners total some 2,000 members covering most States and 6 Canadian provinces.

On May 1st, 2007, 811 came into service across the country. Much of our public awareness focus has been centered on educating the public and excavators through the Call 811 Before You Dig campaign. The CGA relies almost completely on our network of members to implement the 811 campaign. Following are eight examples of CGA's major activities in public awareness and education, the topic on today's agenda. Many other initiatives are identified in the written submission provided earlier this week.

In November 2009, the 811 logo and tagline were painted on the number 29 Shell race car in Homestead for the closing race of the 2009 NASCAR series. In April of this year, Shell once again painted the tagline on the race care for the Talladega race. They were joined by 3M, who included the 811 logo and tagline on the number 16 car. At no cost to the CGA, these messages generated more than a half-million dollars' worth of media coverage for the 811 message.

Beginning 5 a.m. on August 11th, 2009, more than 50 volunteers from Dig Safely New York, National Grid and Con Ed worked the rope lines of the Today Show and Early Show wearing 811 T-shirts on 8/11 Day. One of the volunteers was interviewed, generating a message that, according to advertising equivalency values, would have cost some $50,000.

John Deere has arranged for CGA and the 811 message to ring the closing bell at the New York Stock Exchange on August 20th of this year.

Atmos Energy has incorporated the 811 logo on all print correspondence, which equates to millions of pieces of literature annually.

Chevron funded the production and distribution of a radio PSA tailored to the 19 coastal parishes in Louisiana, reminding folks to please call 811 before dredging in the gulf to avoid further damage and potential injury.

Williams Pipeline provided funding to the CGA to create, produce and distribute an 8-minute video for educating 8- to 11-year-olds on the dangers of digging and the treasures that lie below surface of the Earth.

Colonial Pipeline painted a 30-foot-high 811 logo and the accompanying message on a holding tank along Interstate 85. Following their lead, Kinder Morgan, Sunoco, PSE&G of New Jersey, Williams, Shell and others have all painted the 811 logo and message on tanks facing highly traveled highways throughout the country.

Ten One Call centers have pooled advertising money and contracted Joey Logano, a NASCAR driver, to record radio and television PSAs for ad distribution. Logano's photo highlighting the 811 message has also been incorporated into a large-scale print campaign.

CGA estimates that stakeholder support of the 811 campaign provides a value of $10 million annually in advertising equivalency.

The CGA best practices have become the standard for damage-prevention practices. A number of States have adopted some or all of the CGA practices in their laws or rules governing excavation practices in their States. Per these practices, the CGA believes that consistent, fair and balanced State enforcement of One Call laws in States where no enforcement exists today has the greatest potential for helping reduce excavation damages.

The CGA also believes the elimination of State exemptions to One Call laws would also help reduce damages, and together these two issues, if implemented, will help continue this yearly trend of reduced excavation damages in this country.

In August, the CGA will publish and distribute its sixth report on damage data. Following is a brief summary of highlights that will be found in this report:

2009 marked the fourth consecutive year that more than 100,000 reports were voluntarily input into our system.

It is estimated that total damages to underground infrastructure have gone from an estimated 450,000 in 2004 to 170,000 in 2009, a decrease in damages of more than 60 percent.

It is estimated that no call made to the One Call centers were responsible or were a contributing factor in more than 200,000 damages in 2004, while that number was estimated to be approximately 60,000 last year, in 2009, a decrease of 70 percent.

We believe that the advent of 811 and public awareness programs of CGA stakeholders have had a major impact on this aspect of damage prevention. We still have much work to do. Thank you.

Ms. BROWN OF FLORIDA. Mr. O'Rourke.

Mr. O'ROURKE. Following Bob Kipp is not really fair to me. CGA is such a great organization.

Chairwoman Brown, Ranking Member Shuster, thank you for having the National Association of State Fire Marshals testify before the Subcommittee today.

The National Association of State Fire Marshals represents the most senior fire officials at the State level. Our membership is unique, however, in that many State fire marshals are, in fact, law enforcement personnel, giving our organization a blended fire and law enforcement perspective. Most of our State fire marshals, however, began their careers in the firehouse, working their way up the ranks, eventually achieving the highest level fire service position of the State.

Among the many duties of the State fire marshal, one of the most important is incident prevention.

Mr. O'ROURKE. As such, incident prevention is a central focus in all our programs, in particular for pipeline safety.

The National Association of State Fire Marshals has been actively involved in pipeline education and safety since 2002 when we entered into the Partnership For Excellence in Pipeline Safety with U.S. DOT. The State Fire Marshals and U.S. DOT's partnership is focused on many issues, including liquified national gas safety, pipeline high consequence areas, hazardous material safety, but the foundation of the partnership is a training program entitled Pipeline Emergencies. The Pipeline Emergencies Program offers a comprehensive training curriculum that covers liquid and gas pipelines, transmission and distribution line pipelines.

The unambiguous priority of the State Fire Marshals is to ensure that all fire fighters, in particular volunteer fire fighters, receive comprehensive fire training and prevention education. To that end, the Pipeline Emergencies Training Program, which was developed in 2004, we have shipped 45,000 training packages to both public safety and industry personnel. U.S. DOT has paid for the cost of shipping that material, and there is no purchase fee to any public safety organization that requests a copy.

In addition, we have trained more than 1,000 certified fire instructors in all 50 states.

The timing of today's hearing is quite opportune. One of the limitations of our current Pipeline Emergencies Training Program has been that it has been available only in a hard copy and it is disseminated through a broad network of emergency response organizations. While this has helped to ensure that the public safety community is saturated with the training program, it has limited our ability to measure the program. Several months ago, however, State Fire Marshals and U.S. DOT agreed to update the training curriculum and, most important, make it available in the electronic format.

We are now currently exploring funding opportunities for a more comprehensive pipeline safety training portal. We are not facing electronic or technological difficulties or limitations with this portal. Well established platforms exist, and the platforms exist in order to develop these, deliver these education programs electronically. Some of these platforms allow for integrated and multi-modal notification capabilities. And with these capabilities, the State Fire Marshals and the pipeline industry could engage in measurable communications with the public safety and other public officials regarding safety training, pipeline maintenance, high consequence areas and a myriad of other public awareness priorities.

We currently are reviewing the feasibility of this portal approach. Sustained funding for a curriculum of this type is always a concern, as training cannot be switched on and off depending on the availability of resources. It is imperative to continue the progress that we have achieved through Pipeline Emergencies Training Program. In order to adequately maintain the training necessary for new emergency responders entering into the industry and to update the training curriculum for new procedures and hazardous materials, we respectfully request that your Subcommittee authorize funding for pipeline training for a multi-year period.

The National Association of State Fire Marshals remains committed to providing pipeline safety training and awareness to the Nation's emergency responders. Hearings like this are essential to sharpening the country's focus on these so preventible incidents. Public awareness and education, as well as emergency responder training, are a vital component of a pipeline safety program. Our association and our membership stand ready to provide greater assistance to the Subcommittee, to the executive branch and to our State and local partners. I thank you on behalf of the National Association of State Fire Marshals for this opportunity and am happy to answer any questions.

Ms. BROWN OF FLORIDA. I think we can get through Mr. Davis at least.

Mr. Davis.

Mr. DAVIS. Chairman Brown, Ranking Member Shusterand Members of the Committee, I appreciate this opportunity to testify before you today.

My name is Sam Davis, and I am the general manager and CEO of the Lake Apopka Natural Gas District in Winter Garden, Florida.

The Lake Apopka Natural Gas District currently operates a municipal natural gas distribution utility with over 600 miles of pipe infrastructure which serves a 500 square mile area within Lake and Orange Counties in central Florida. The district serves approximately 15,000 customers.

I testify today on behalf of the American Public Gas Association. APGA is the national association for publicly owned, not-for-profit natural gas retail distribution systems. There are approximately 1,000 public gas systems in 36 States.

Public gas systems are an important part of their community. Our members' employees live in their communities they serve and are accountable to local officials. Public gas systems are generally regulated by their consumer owners through locally elected governing boards or appointed officials.

However, when it comes to pipeline safety all of our members must comply in the same manner as industrial-owned utilities with pipeline safety regulations issued by Pipelines and Hazardous Materials Safety Administration, which is PHMSA. For most of our members these pipeline safety regulations are enforced by an individual State's pipeline safety agency.

While the manner of safety regulation may be the same, one major difference between the average industrial-owned utility and the average public gas system is size and the number of both customers served and employees. Approximately half of the 1,000 public gas systems have five employees or less. As a result, regulations and rules have a significantly different impact upon the small public gas system than they do upon a larger system serving hundreds of thousands or millions of customers with several hundreds or even thousands of employees.

In addition, increased costs imposed on these local governments by additional regulation of their natural gas utilities can potentially cut into other services provided by the local government, including fire, police and public safety programs.

Through a cooperative agreement with PHMSA and APGA security integrity, they assist small operators to meet their regulatory requirements, and we thank PHMSA for their support.

Gas utilities are the final step in taking natural gas from the production field to the homeowner or business. As such, a public gas systems' commitment to safety is second to none. A part of safety is education and public awareness.

Even before there were Federal pipeline safety regulations, public gas systems conducted public awareness programs. Utilities add odorant to the gas to give it its distinctive smell so that people can smell a leak. Educating the public so that the public recognizes a gas odor and to call the utility if they smell gas is a critical component of each utility safety program.

Another critical component is educating the public about the existence of buried gas lines in their community and the importance of calling the One Call center to have lines marked before digging. In 2006 APGA developed a multi-public awareness plan. APGA also conducts public awareness surveys for participating members. It is called the APGA Gas Overall Awareness Level, GOAL, program. And it calls a random sample of customers and noncustomers in the service territory of participating utilities. We are conducting our fourth year of surveys, even though the regulations did not require service to be completed until this year.

As the Committee considers legislation to reauthorize the Pipeline Safety Act, I want to communicate our public—excuse me, our support for reasonable regulations to ensure that individuals who control the Nation's network of distribution pipelines are provided the training and tools necessary to safely operate those systems.

Over the past several years the industry had numerous additional requirements placed on it. For this reason, APGA strongly supports a clean reauthorization of the act.

Should the Committee consider revisions to the act, there are a number of issues APGA will ask the Committee to consider. One of these issues I would like to bring to your attention relates to an expansion of the excess flow valve requirements to commercial and industrial businesses and multifamily residences. A commercial building, unlike a residential unit, may see changes in gas—may see huge changes in gas demand as tenants in the space move in and out. As a result, the EFV application to these units would be impractical.

PHMSA has established a working group of government, industry, and public experts to study the issues relating to installing large volumes, EFVs and other single residential services. We encourage Congress to allow this stakeholder working group to proceed towards making specific recommendations on this issue. Public gas systems are proud of their safety record. Safety has been and will continue to be our top priority. We look forward to working with the Committee on reauthorization of the Pipeline Safety Act. Thank you.

Ms. BROWN OF FLORIDA. Thank you.

What we are going to do is stand in informal recess. We have three votes, and we will be back as soon as the last vote is over. Thank you.

[Recess.]

Ms. BROWN OF FLORIDA. The Committee will officially come back to order.

Mr. Lidiak, we left off with you. Thank you.

Mr. LIDIAK. Good afternoon Chairwoman Brown, Ranking Member Shuster and Members of the Subcommittee. Thank you for inviting me to testify on pipeline public awareness and education programs.

I am Peter Lidiak, the pipeline director for the American Petroleum Institute. My comments today are being presented on behalf of API and AOPL, the Association of Oil Pipelines. Together our members operate 85 percent of the liquid pipeline miles in the United States.

Public awareness programs are tools for pipeline operators to get information about pipelines into the hands of the public, excavators, public officials and first responders, among others. This includes information about activities that are and are not appropriate around pipelines and what to do in the event of a pipeline emergency.

Pipeline operators have conducted some type of public awareness programs for 20 years. Over time, pipeline operators have developed and shared practices to improve their programs. In 2003, a consensus standard establishing a common framework for public awareness programs, API Recommended Practice 1162, was published. And in May 2005, the Office of Pipeline Safety incorporated RP 1162 by reference into its regulations, thereby requiring liquid and natural gas operators to follow these practices.

When the first edition of RP 1162 was being drafted, the goal was to craft a public awareness framework and provide practices that were clear, reasonable and practical, so that pipeline safety was enhanced. That meant clarifying what public awareness actually means; determining the techniques and logistics for achieving it; and then measuring for effectiveness. And it meant taking on this task for the hundreds of pipeline operators and many millions of people who live or work along the hundreds of thousands of miles of pipelines that run across our Nation.

Many stakeholders were involved in developing RP 1162, including industry, members of the public, State regulators, and the Office of Pipeline Safety. We gathered input and received on drafts and used that feedback.

Communicating safety awareness about anything is hard: Not using a cell phone while driving; wearing a seat belt; the dangers of exceeding the speed limit. Each and every day people are barraged with messages and information. Sometimes people don't want to take the time to listen or don't have enough interest, even though we think they should. It is little wonder that pipeline operators sometimes struggle to communicate about pipeline safety in our communities.

Much has been done to enhance public awareness since the first edition of RP 1162 came out, and much has been learned. We are continually finding new and more effective ways to reach out to key audiences about pipeline safety. Our pipeline public awareness programs are more effective when we can engage in two-way communication with our key audiences.

As part of our efforts we will make RP 1162 better, as we are now doing with a new edition that we expect to come out later this year. The proposed revisions for the second edition of RP 1162 are expected to address some of the challenges that operators face, increase the effectiveness of operator public awareness programs, and address a recommendation from the National Transportation Safety Board to identify 911 emergency call centers explicitly as part of the target audience for public awareness programs.

Another key element of our public education programs is getting excavators to use One Call systems before they dig and the public to report unauthorized excavation. The industry has strongly funded and participated in the Common Ground Alliance since its inception to promote best practices in excavation and marking around underground facilities. And we supported the rollout of the national 811 Call Before You Dig campaign.

We also support strong State damage prevention laws that call for states to eliminate all exemptions from those laws. This would remove a significant safety gap because excavation damage is a problem, regardless of who the excavator is. Public awareness programs need to continually evolve to meet the challenges of communicating with the public, excavators and officials. However, our objective should remain the same: Preventing damage and promoting safety awareness.

Revisions to the statute regarding public awareness programs are unnecessary. Rather than focusing on factors like public behavior changes, which are nearly impossible to quantify, we believe operators need the flexibility to build and innovatively shape their programs to meet our mutual goal of promoting safety awareness.

In order to provide maximum protection to the public from excavation damage, we strongly urge that all exemptions from State One Call requirements be eliminated. And when the revised edition of API 1162 is published, we strongly encourage OPS to adopt it as a needed update to the pipeline public awareness requirements.

This concludes my prepared remarks, and I would be happy to answer any questions that Members of the Subcommittee may have.

Ms. BROWN OF FLORIDA. Thank you. I think I will start with you Mr. Lidiak.

Following the 2007 pipeline incident in Mississippi, the NTSB made some safety recommendations to the American Petroleum Institute to revise API 1162 to identify 911 emergency call centers as emergency response agencies to be included in outreach programs under a pipeline operators public education program. What has API done to address this issue as far as NTSB recommendations?

Mr. LIDIAK. Chairwoman Brown, API has in the draft RP included 911 call centers, explicitly identified them, and those will be published in the final version. And we have informed NTSB of that action, and they have marked the action as ongoing and acceptable.

Ms. BROWN OF FLORIDA. The recommendation was made in 2007?

Mr. LIDIAK. Yes.

Ms. BROWN OF FLORIDA. What year is this?

Mr. LIDIAK. This is 2010. And this is the time period in which we would be reviewing the RP, and it has been under revision for the last 2 years.

Ms. BROWN OF FLORIDA. So when will it be implemented? It is being implemented as we speak or you are planning on implementing it?

Mr. LIDIAK. The RP is due to be balloted some time within the next couple of months.

Ms. BROWN OF FLORIDA. Would you explain the process to me? I guess I don't understand.

Mr. LIDIAK. When we review a standard, the working group will look at things that require changes, and they will work on it over time to make those revisions.

And then, at the end of the process, we will put it out for comment. We will collect comments, respond to them, and then ballot the final document. And if it passes the ballot, it goes into effect. And if it doesn't pass, then we go back and make further changes and then reballot it.

Ms. BROWN OF FLORIDA. So you all do not have to implement these recommendations?

Mr. LIDIAK. We are under no legal obligation to because NTSB is not a regulatory body, but we always take NTSB recommendations seriously, and we try to address them when we are making revisions to our standards documents.

Ms. BROWN OF FLORIDA. OK.

Mr. Shuster.

Mr. SHUSTER. Thank you very much, Madam Chair.

The first question, Mr. Kipp, what can Congress do to help your alliance promote the efforts that you do for the 811 calling?

Mr. KIPP. We receive a cooperative grant of $500,000 per year. An extension of that would be terrific.

As per the testimony, this year our budget takes that $500,000 into account as well as $1.2 million from the industry, and with that $1.7 million, we operate the CGA.

A continuation of that grant would be great. It really enables us to develop material that the industry can use and at the same time continue building robustness into our damage information reporting tool, which is a tool that those 100,000 damages are submitted to, and we publish that report annually.

Mr. SHUSTER. Thank you.

Also, in regards to the exemption, it is an issue that I still can't comprehend. I am not a big proponent of the Federal Government doing sweeping laws that say, you must do this, because my concern is down the road, as laws tend to evolve or devolve, whichever the case may be, any time someone sticks a spade shovel in the ground, they will be required to call.

So can you talk to me, what is your view on the exemptions in some of the States?

And after that, I want to talk to Mr. Tahamtani and ask your view on that from your States.

Mr. KIPP. We recently passed the best practice. And I am sure you are aware of the process. But every one of our best practices must be agreed to by everybody and everyone in the CGA, all 16 stakeholder groups. And the practice took 8 years to get through.

But, basically, we are in favor of mandatory participation with a very few slight exemptions. An example, if you own the property, there is no public thoroughfare nearby, you are digging on your own property, you have your own facility, you know where it is—an example, a railroad right of way—then fine, go ahead and dig on your property, you know where it is, you know there is no danger. And that would be just about the only exemption that we are in favor of.

Mr. SHUSTER. OK. Thank you.

Mr. Tahamtani.

Mr. TAHAMTANI. With regard to exemptions, I think it is very easy to say that we should have no exemptions.

Virginia law was changed dramatically back in 1995, and we have a number of exemptions. For example, not all lines can be located. Even if you call, the utility can't find them because they were put in years ago; they don't have a tracing wire, for example. We have an exemption that says if there is a call for excavation and the utility can't find its own facility, they should be able to hand dig and find it.

So you have to be very careful not to say no exemption.

In Virginia, every exemption that we have is backed by data, by experience. I will give you a quick example. Back in 1995, when we tried to remove the Virginia DOT from that exemption, they appeared before our General Assembly and said, if you do this, the taxpayers have to bear about $11 million a year for us to dig in our own right of way, we know what we have in the right of way; 15 years later I don't have the data to show that they should not have that exemption. So some exemptions do make sense; some don't.

Mr. SHUSTER. And what, if they had to call up, what would it cost the taxpayers of Virginia, did you say, $11 million or more than that?

Mr. TAHAMTANI. Well, when VDOT, in this case, is digging on their right of way, if they make a call, they have to now mark all of their facilities, and other utilities have to mark their facilities, and as a result of all of that, you have got an expense that keeps on going up.

Now, no one confirmed the $11 million, but we went on record to say that if damage data proved that our DOT employees were causing problems, we would be coming back. Again, 15 years later, they are in the 1 percentile range in terms of damages.

Mr. SHUSTER. Thank you.

And Mr. Lidiak, if I could, my colleague from New York, on a couple of occasions, and I think other colleagues of mine have talked about API's recommended practices, making them free to everybody. Can you explain to us why they are not free? The administrator has talked a little bit about it, but if you could.

Mr. LIDIAK. I would be happy to, Mr. Shuster.

API charges for its standards, as do all standards organizations. These fees cover the costs of publication and the staffing needed to manage those publications.

API manages 500 standards at the current time, give or take, and it requires a lot of oversight. And that is how we recoup the fee. It is part of our business that is a self-supporting part of our association's work.

Mr. SHUSTER. And so, if Congress forced you to do them for free, it would be a taking. There would be a constitutional—a legal question there.

Mr. LIDIAK. I am not a lawyer.

Mr. SHUSTER. Right. But that would be my guess, it would be a pretty—you know, taking somebody's proprietary information that they paid to staff and research it, so, OK. That is what I thought. And I think that the administrator let us know that at some point that that seemed to be the case. I appreciate it.

And with that, I yield back.

Ms. BROWN OF FLORIDA. Thank you.

Mr. Kessler, you stated that the Pipeline Safety Trust believes that communities should feel safe and when pipelines run through them, the trust of the government, everything should be proactive, and I agree to all of this. What is missing? What else do you think we need to be doing?

Mr. KESSLER. Well, Madam Chairman, I think generally there is very—it is very difficult for citizens to get access to a lot of this information, as my testimony said. And to participate, particularly in the industry standard development, it's not something that most citizens, it is not like a government rulemaking where there is a Federal Register notice, that there are potentially meetings around the country: it's notices to members of that organization. I am sure they would welcome if we asked to participate, but I don't know that invitations get sent out to groups like ours or other groups around the country or even local governments to participate all occasions.

So it is a very different process than the Federal Government would undergo. So I think that is one particular area. I think access to more data about individual pipelines being available so people can know what is actually, that these inspections have been performed, what has been found, what has been remedied; I think that makes people feel safer when they can actually see this, rather than having to rely on an interested party with a for-profit motive telling them, don't worry about it, everything is safe or a regulator, who, while getting better, doesn't have the greatest history with the public or with this Congress in terms of its credibility on these matters. So, generally more information is better.

Ms. BROWN OF FLORIDA. I agree.

And there is a system that one of the things that I know that we will be addressing, because even when the government wants certain information, they have to pay for it or if someone—I mean, that is the craziest thing I ever heard. That will be one of the things that is going to be addressed.

Mr. KESSLER. One thing I would suggest, that as a condition of including these industry standards in a rulemaking array, then they are required to turn it over for free; otherwise the government will have to develop its own standards and will have to find a way of raising the money.

Ms. BROWN OF FLORIDA. Well, you know Ronald Reagan said trust but verify.

Mr. KESSLER. Right.

Ms. BROWN OF FLORIDA. So it should be an independent, or the government at least publishing the standards and verifying that they are accurate, I will tell you anything.

Mr. KESSLER. I think that is right. I feel like, when we put things into the record of this Committee or of the House and the Senate, we introduce all sorts of public information or privately produced information into the record to make it publicly available.

I really think it would be—and I am not averse to compensating the industry either, reasonably, but I think there really needs to be a condition that if we are going to use these standards, then the condition on the industry is—and I am not advocating using these standards, but if we are going to do it, then the industry has to make it available, basically turn it over to the government for publication at whatever, whether it is free or some level of compensation.

Ms. BROWN OF FLORIDA. I just really believe there should be some independent verification.

Mr. KESSLER. Yeah.

And the API public awareness document can't be, even as early as, you know, as recently as today, you can't get that off the Web site. Well, it was available, and it was available in a way that you can't print it. So it makes it very hard to go through such a big document when you can't print it out. I know I do a lot of my research still on paper.

Ms. BROWN OF FLORIDA. Well, I mean, I understand, when we want it, we have to pay for it, so there is a major problem there that will be addressed.

But I can't say I was around in 2002 and you were around in 2002 when they came up with some recommendations prohibiting the user fees to fund the programs. Do you know why?

Mr. KESSLER. Sure. The program was developed primarily Mr. Boucher from Virginia——

Ms. BROWN OF FLORIDA. I didn't hear you.

Mr. KESSLER. Mr. Boucher from Virginia was the primary, and Mr. Dingell. And what it was, the program was developed as a compromise on public information right to know between Republicans and Democrats. And it was a good compromise. It allowed citizens a way to get more information.

But it was designed, based upon the EPA Technical Assistance Grants under Superfund, which this Committee is familiar with, and really is designed to go to community groups and even local governments. And the reason the word for-profit, excluding for-profit entities, that was, in drafting it, the specific meaning of for-profit was pipelines. It was, you know, leg counsel, and we never thought that we needed to specifically say the word pipeline operators or companies. For-profit seemed to cover it.

But it clearly was meant for these local governments and citizen groups. And then, furthermore, the restrictions, not all of which I would love to see continued, but they are there in law and passed overwhelmingly by this Committee and the House and the Senate, and they state that the money is to be used for scientific analysis, data gathering. And this is something I think the industry was very interested in. It is really to be for hiring technical experts, engineers, for assessing data, but also for some public participation where the public, helping fund the public go to these things, like the API processes or government processes. They are not supposed to be used for lobbying, and they are not supposed to be used for acquiring physical equipment. It is a small amount of money. That is a lot of reason to——

Ms. BROWN OF FLORIDA. The grant caps $50,000. Do you want to speak to that? And really, the amount of the total program, probably, she said $1 million?

Mr. KESSLER. It is $1 million per year, I believe. The $50,000 number the members drew from the existing Superfund program, which is structured so that a $50,000 grant is awarded, but you can continue to award, build upon that award over time. The problem is that you can't find an engineer anymore and hire a firm for $50,000, and so it becomes not as useful, the amount, as I think members thought it was back then. So it would be useful to raise that cap.

Ms. BROWN OF FLORIDA. And I think, you know, also, not just the cap, but the amount of communities that can participate. I mean, critical areas, I mean, should be addressed.

Mr. KESSLER. Right. The communities, this hasn't been well publicized. And as you know, and I referenced in my testimony, it took many years. It took in fact a second reauthorization, the 2006 Pipes Act, to really get PHMSA to act on moving this. I know there are a number of members who personally were very upset and expressed it to previous administrators over the duration of how long it took to roll out the program.

And now that it is rolled out, I think there is a real issue with how well it is being publicized, which I think PHMSA agrees with, and that we need to really make an effort to let communities know that they are able to avail themselves of these funds. And I think it will result in a more informed public. I think it is kind of the Alfred Hitchcock thing; you fear the things you don't see or you don't know more than when you have the information and you know what you are dealing with. And I think many things that communities fear, once they have an independent verification of maybe what the pipeline company or PHMSA is saying, will feel much more comfortable, and it will make life easier for pipelines, too.

Ms. BROWN OF FLORIDA. Thank you.

Mr. Kipp, in your written testimony, you stated that the Common Ground Alliance believes that consistent fair and balanced State enforcement of One Call laws in States where no enforcement exists today have the greatest potential for helping reduce dangers. What States that enforces these laws without impacting their already tight budget, expense budget, can you please elaborate on this? Specifically, what areas where no enforcement exists?

Mr. KIPP. Well, one of the States—there are a number of States who do enforce it, but a good model is the one right next to me. Massoud Tahamtani in Virginia, they have a model that has been in existence since 1996. And they reduced their damages, if I recall the number, Massoud, from 4.59 damages per thousand tickets in 1996 to somewhere under 2 right now, if I am not mistaken—1.5.

There are a number of States that have either no enforcement whatsoever or enforcement that has been assigned to, for instance, the State police. In one of the states I know of, they don't have time to enforce; they won't do it. And such, there is really no great improvement as a result of their laws.

You really see a difference in States like Georgia, Virginia, Maine and other States where they have a variety of types of enforcement, fair and balanced enforcement. And that is critical.

A lot of States are looking right now at enforcing the laws only when a contractor doesn't do what he should do. Massoud will tell you that, in Virginia, they have a system where everyone has steps, everyone follows those steps, and whether it is the contractor who doesn't call or the locator that doesn't mark or mismarks, they are looked at and fined appropriately or accordingly or educated if need be to ensure that there is no recurrence of this. And that is how he has been able to get his damages down to some pretty outstanding levels. Some of the other States I am familiar with have numbers in the 4 or 5 or 6 damages per thousand tickets, 3 and 4 times what Massoud has.

Ms. BROWN OF FLORIDA. Can you give us a—do we have a comprehensive report on each of the States and the status?

Mr. KIPP. There is no report by State as such. The numbers I am giving you—I know Massoud has his by State. Some other States will have some numbers. Like Colorado, they have mandatory publication of all damages, not only for gas and petroleum but for all infrastructure. And they have a good report, and that could be provided. The numbers I am giving you are mostly generated from discussions that I have with, confidential discussions, frankly, that I have with gas operators and petroleum operators who will tell me what they are running and are looking to improve but are not looking to necessarily have a burden of fines on their system.

Ms. BROWN OF FLORIDA. Maybe that is one of the things that we need to look into in a comprehensive study of each State and where we stand.

Mr. KIPP. Yes. Texas has another system that they just rolled out I believe 2years ago, the Railroad Commission. And it is very different than what they have in Virginia, but it seems to be working. We will see.

Ms. BROWN OF FLORIDA. Mr. Tahamtani, can you just give us some of what you all have done to bring down your incidence and what recommendations that you would add?

Mr. TAHAMTANI. Sure. Just a brief history. It was back in 1993 where a pipeline ruptured not far from here in Reston, Virginia, and dumped about 400,000 gallons of oil in the Potomac River. As a result of that, we got letters and calls from some Members of Congress here and from the Secretary of Transportation. So we brought a bunch of people together; excavators, locators, utilities, everybody who had something to do with this process, and we wrote our law.

And a couple of things that we did was—one was enforcement. Because obviously, even the best laws won't probably work by themselves. And in that, we felt that instead of the government enforcing it, we needed an expert body of people, contractors, utilities, locators, Miss Utility, all those entities that have a hand in the process, to look at every single damage.

In Virginia, every single pipeline damage must be reported to us and must be investigated. And so that enforcement plus investigation of every single report has really been one element that has made the program work.

The other piece is that, in Virginia at least, all the fines go to public education. So that has been about $1 million just going back to the public on public education. And if you add all the money that the Virginia operators, pipeline operators, and others spend, we have got about a $7 million public education program in the State.

We also made a number of changes in our law that have made it easier for the contractors and the utilities to talk to each other. And I mean, when they put a mark down they, designate whose mark it is. We have also said that if you get out there to dig and that mark doesn't make any sense to you, you cannot dig, you have to call back and wait 3 hours. So there are a number of these things that have made us, made our program work to the point that, Bob mentioned, about 65 percent decrease in pipeline damages since 1996.

Ms. BROWN OF FLORIDA. Does the State of Virginia exempt itself from the 811 requirements, does it ever?

Mr. TAHAMTANI. We have a number of exemptions. I mentioned earlier that all of these are based on data, and the data still supports those exemptions.

However, there are some exemptions that we had back in 1996 that we removed them with some fight, and they have worked to, again, support the program pretty well.

Ms. BROWN OF FLORIDA. Thank you.

Mr. Davis, I understand that Lake Apopka received a $50,000 grant from DOT under the Community Technical Assistance Grant Program. What are you all doing with the grant, and what is your experience with PHMSA on the grant process?

Mr. DAVIS. Madam Chair, yes, Lake Apopka was a recipient of one of the $50,000 grants. Lake Apopka applied for this grant based on criteria released in the Federal Register, Volume 73216, dated November 6, 2008. There were criteria in that release that we were in compliance with. There was also a press release issued by DOT on September 17, 2009, announcing the grant awards and stating examples of acceptable projects for that grant. As such, Lake Apopka Natural Gas is currently using the grant toward the initial development of a GIS information system. That system, when complete, will help in enhancing our pipeline monitoring capabilities and public awareness campaigns to promote the sharing of information between our pipelines and other natural gas pipelines in the areas and land owners as well.

So the grant has been very, very useful. Our experience with PHMSA has been very good, and to my knowledge, we haven't had any issues come to my attention because of that.

Ms. BROWN OF FLORIDA. How are you all using the grant?

Mr. DAVIS. We are implementing, currently implementing the formation of a GIS system, Geographical Information System, for monitoring purposes. We are just implementing it. We had none. The district needed one. We didn't have too many funds for that, so we applied for the grant to get some assistance in that.

Ms. BROWN OF FLORIDA. So are you working with the city council or county?

Mr. DAVIS. No. Actually, we have a consultant that we are working were with in helping us begin that. We are a district so, we don't belong to any particular city council. I do provide services to nine municipal systems in my district, but I report to a five member board that these board members are made up of council folks within the districts and the cities that I serve.

Ms. BROWN OF FLORIDA. Isn't Apopka part of Orange County?

Mr. DAVIS. Yes, we are. We serve all of Lake and Orange County.

Ms. BROWN OF FLORIDA. So have you all talked with the council, the county commissioners?

Mr. DAVIS. No, we haven't. Actually, I hadn't had any discussion with any county commissioners. Mostly our system is located in West Orange County, but I do have conversations and contact with the various mayors of each of the cities that we serve.

Ms. BROWN OF FLORIDA. OK.

Last question, Mr. Lidiak, is there anything that prevents PHMSA from just issuing its own standards and not simply adopting the API standards?

Mr. LIDIAK. Could you repeat the question? I don't think I understand.

Ms. BROWN OF FLORIDA. Back to Mr. Shuster's question on standards. PHMSA adopts your all standards, and the question is whether or not they could issue their own standards? Is there anything that will stop them from issuing their own standards?

Mr. LIDIAK. There is nothing that would stop them from issuing their own standards.

Ms. BROWN OF FLORIDA. Well, I understand we don't want to duplicate services, but do you think there is a need to be independent?

Mr. LIDIAK. I believe that PHMSA is independent. I believe that they evaluate whether they are going to use the standards that are required under the National Technology Transfer Advancement Act, and they make appropriate use of standards when they see that they fit their need.

Ms. BROWN OF FLORIDA. Well, I guess my question that I asked earlier, and this is the second or third time it has come up during the hearing, is that everything is not made available to the public. For example, if I wanted some information, I would have to pay for it. And that I have a problem with.

Mr. LIDIAK. As was the case with 1162, we made a decision with that standard to make it available on our Web site in a nonprintable form, as Mr. Kessler indicated. We thought that protected our copyright worldwide and still gave the public access to the document.

And certainly, with this document, we would consider doing that in the future as we work with PHMSA.

Because of the model that we use and other standards organizations use, it would be difficult to do that for all of our standards.

Ms. BROWN OF FLORIDA. Well, that is an issue that we are going to continue to work through and see if we can come up with some answer that will better satisfy me anyway.

Yes, sir, Mr. Kessler.

Mr. KESSLER. Madam Chair, I just want to comment real quickly, following up on your question. PHMSA, there is nothing that stops PHMSA from doing just what you said, aside from lack of budget, which I think is important, that they have their budget. And as I said in my testimony, it also points to a lack of expertise that I think should be of concern to the members, that the regulator doesn't have the expertise to regulate its community. So I just want to say that maybe there needs to be some thought about how this regulator performs its duties and whether it has the abilities and the resources it needs to do that.

Ms. BROWN OF FLORIDA. Absolutely. That is what I am thinking about as we move forward; how we can better work together to make sure that we are doing what we need to do as a Member of Congress to protect the public?

Mr. KESSLER. And we certainly appreciate that, Madam Chairman, the work that you are doing, Chairman Oberstar, Mr. Shuster and others.

Ms. BROWN OF FLORIDA. Are there any closing comments that any of the panelists would like to make?

I have a couple of additional questions that we will submit to you in writing. And with that, I want to thank the witnesses for their testimony and the Members for their questions.

Again, the Members of this Subcommittee may have additional questions for the witnesses, and we will ask you to respond to them in writing. I have some already.

The hearing record will be held open for 14 days for Members wishing to make additional statements or any further questions.

Unless there is further business, the Subcommittee is adjourned. Thank you.

[Whereupon, at 5:02 p.m., the Subcommittee was adjourned.]

OPENING STATEMENT OF REP. STEVE COHEN

Subcommittee on Railroads, Pipelines, and Hazardous Materials

"Pipeline Safety: Public Awareness and Education"

July 21, 2010

I am pleased to be here today to receive testimony from the Administrator of the Pipeline and Hazardous Materials Safety Administration as well as our other distinguished guests regarding pipeline safety education and awareness.

Madame Chair, thank you for holding this important series of hearings. The historically-disastrous Deepwater Horizon oil spill in the Gulf of Mexico is destroying the environment and economy of the Gulf and reminding us of the importance of pipeline safety. The issue of pipeline safety often flies under the radar in American politics. When a highway is proposed, citizens from all over the impacted area come out to express their support or concerns over the plan. However, pipelines often do not receive the same attention because they are viewed as having little impact on people. But in many cases nothing could be further from the truth as some pipelines such as the proposed Keystone XL pipeline cut through sensitive ecosystems, cross rivers, and invade ranches and farms, irrevocably scarring and poisoning the land.

I would like to urge the Committee and our witnesses that we take the issue of pipeline safety seriously and make a strong commitment to enhance public awareness and education on this critical issue. I thank the witnesses for attending this important hearing today and look forward to hearing their testimonies.

Congresswoman Laura Richardson

Statement at Committee on Transportation and Infrastructure,
Subcommittee on Highways and Transit

Hearing on "Pipeline Safety: Public Awareness and Education"

2167 Rayburn House Office Building

Wednesday, July 21, 2010

2:00 P.M.

Madam Chairwoman, thank you for convening this hearing to receive testimony on pipeline safety public awareness and education programs. This issue is one that directly impacts the 37th Congressional District of California.

My district is crisscrossed by pipelines that help comprise the National Pipeline Mapping System (NPMS). There are 643.15 total pipeline miles. Due to the districts' population density and its location near commercially navigable waterways, much of the 37th meets the standard of a High Consequence Area (HCA). There is likely not a single person in my district that does not live in close proximity to a pipeline. Thus, public awareness and education is essential in my district, and must reach my entire district.

The 37th District has had a less than stellar record in terms pipeline incidents in recent years—from 2002 until early 2009, there were a total of 51 spills. Given this fact, I believe that further measures must be taken to inform residents of the dangers that these pipelines present, especially since they spills are oftentimes in peoples' backyards.

Pipeline safety could be enhanced if greater transparency is applied to the agencies and organizations that oversee and operate pipelines. As a member of the House Committee on Homeland Security, I am aware that certain steps must be taken to prevent our pipeline system from falling prey to terrorists. I applaud the efforts of the PHMSA to do so as a result of the events of September 11th. We must continue to work to ensure that the proper balance is struck between security and public disclosure and awareness.

I also want to continue to discuss a point which I brought up at the second of this series of hearings. In preparation for this hearing, the Subcommittee on Railroads, Pipelines, and Hazardous Materials wanted to view the regulation that deals with how pipeline operators develop their public awareness plans. However, the regulation was not published in the information available to the Subcommittee—it only referenced an American Petroleum Institute (API) standard which is essentially the entire regulation. When the Subcommittee asked PHMSA for the standard in its full form, they said that they could not supply it for legal reasons. Surprisingly, the Subcommittee was told that if it wanted to see the standard, it needed to purchase it from the API for $108.

It is clear that Congress, with our oversight responsibilities, should not be forced to pay to see the regulations. However it is even more concerning that the public, and other government agencies responsible for enforcement, would have to pay to see these regulations.

It also raises concerns for me about the American Petroleum Institute (API) profiting from these regulations, and the relationship between API and the regulators. These standards should be free and open to both the government and the public to ensure maximum compliance.

I am also concerned that when PHMSA adopts API's industry "recommendations" into regulation it can cause some confusion and concern as to the distinction between the requirement of abiding by the regulation and the wording of the industry recommendation which uses words like "may" rather than "shall" or "might or "could" rather than "must". Inspectors must be able to determine what is actually required and these industry recommendations often leave these issues unclear.

I look forward to discussing these and other issues at the hearing today. Thank you Madam Chairwoman.

Questions

1. In preparation for this hearing, the Subcommittee on Railroads, Pipelines, and Hazardous Materials wanted to view the regulation that deals with how pipeline operators develop their public awareness plans. However, the regulation was not published in the information available to the Subcommittee—it only referenced an American Petroleum Institute (API) standard which is essentially the entire regulation. When the Subcommittee asked PHMSA for the standard in its full form, they said that they could not supply it for legal reasons. Surprisingly, the Subcommittee was told that if it wanted to see the standard, it needed to purchase it from the API for $108.

    a. Does it make sense for Congress to be unable to see the actual language of a regulation unless it pays $108?
    b. Should the PHMSA be prohibited from adopting regulations that reference standards?
    c. Is it appropriate for API to be profiting from the sale of regulations?

2. Presently at last report, PHMSA has 88 inspectors in its ranks with additional personnel being hired. For every inspector to enforce just this one API standard they would need to have a copy of the guidance at the cost of $93 each, meaning that PHMSA would expend over $8,000 to purchase these books for each inspector.
    a. In light of this and the 69 other industry standards incorporated by reference in PHMSA Pipeline Rules, can you tell me what is the increased cost for PHMSA to enforce its own rules?
    b. How much money does PHMSA spend annually on purchasing API standards?

    c. What about the States? Many of them act as "agents" to enforce Federal standards and regulations. Do they have to purchase them as well?

3. On May 19, 2005, PHMSA issued a Final Rule on public education programs which once again stated that the programs had to be based on the American Petroleum Institute's Recommended Practice 1162.
   a. Did PHMSA publish the recommended practice in the Final Rule or in the rulemaking docket so that it could be reviewed by the public? If not, why not?

   b. How would a member of the public obtain a copy of the standard for review?

4. When PHMSA adopts these industry "recommendations" into regulation it can cause some confusion and concern as to the distinction between the requirement of abiding by the regulation and the wording of the industry recommendation which uses words like "may" rather than "shall" or "might or "could" rather than "must".
   a. How does an inspector determine the difference between whether they have to abide by the industry recommended or not?

5. In the Pipeline Safety Improvement Act of 2002 (Public Law 107-355), Congress required each operator of a gas or hazardous liquid pipeline to develop public education programs. Congress also authorized PHMSA to develop standards for those programs.

   On June 24, 2004, PHMSA published a Notice of Proposed Rulemaking (NPRM) requiring each pipeline operator to develop and implement public education programs based on the provisions of the American Petroleum Institute's Recommended Practice 1162, entitled Public Awareness Programs for Pipeline Operators. In the NPRM, PHMSA states that the American Petroleum Institute's standard was developed "through formation of a multi-industry task force including representation from hazardous liquid, gas transmission, and gas distribution pipeline operators, as well as trade organizations representing the individual industry segments. Representatives of PHMSA and the National Association of Pipeline Safety Representatives (NAPSR) (representing State pipeline regulatory agencies) participated in meetings and provided input into both the development process and the content of the document."
   a. Who is on the taskforce?

   b. Do you know if the general public was part of developing this standard in any way?
   c. When the NPRM was issued, did PHMSA publish the Petroleum Institute's recommended practice in the NPRM or in the rulemaking docket so that it could be reviewed by the public? [Answer is NO] Why not?

6. The 37th Congressional District of California is crisscrossed by pipelines—according to the National Pipeline Mapping System (NPMS) there are 643.15 total pipeline miles. From 2002 to early 2009, there were a total of 51 pipeline incidents.

   a. Given this track record, what actions have been taken to inform residents, who in almost all cases live in a high-consequence area (HCA), of the potential dangers pipelines pose?

7. Section 15 of the Pipeline Safety Improvement Act of 2002 required operators of pipeline facilities (except distribution lines and gathering lines) to submit to the Secretary of Transportation certain data appropriate for use in the National Pipeline Mapping System (NPMS).

   a. What measures are in place to ensure compliance?
   b. Is there verification that the system is currently complete and that all pipelines have been mapped?

8. The "PHMSA Pipeline Safety Program One Call Grant" has a maximum amount request of $50,000 per State.

   a. Why is there a $50,000 limit per State?
   b. Does it make sense to place the same funding limit on California as a state like Rhode Island?
   c. Why isn't this funding limit done on a State by State basis, calculated by a measure like population, HCA, or pipeline mileage?
   d. Is there a way to divide up the funding that would be more effective and get the most out of the limited dollars?

9. The Pipeline and Hazardous Material Safety Administration (PHMSA), as a result of the September 11th terrorist attacks, has restricted access to certain NPMS data to Federal, State, and local government agencies (including emergency responders). Still, PHMSA provides a webpage for the public to obtain State information, including who operates pipelines in their area and contact information for those pipeline operators.

   a. Given the potential threat to the U.S. pipeline infrastructure posed by terrorists, should any further security measures be taken, or are the current ones adequate?
   b. How to balance the need for public information and the need for security?

TESTIMONY OF SAM DAVIS,
GENERAL MANAGER AND CEO OF THE LAKE APOPKA NATURAL GAS DISTRICT, WINTER GARDEN, FL ON BEHALF OF THE AMERICAN PUBLIC GAS ASSOCIATION

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BEFORE THE HOUSE TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS

HEARING ON PIPELINE SAFETY PUBLIC EDUCATION AND AWARENESS

JULY 21ST, 2010

Chairwoman Brown, Ranking member Shuster and members of the Committee, I appreciate this opportunity to testify before you today and I thank the Committee for calling this hearing on the important subject of pipeline safety public awareness and education. I also want to commend the Committee for all the work it has done over the years to ensure that America has the safest, most reliable pipeline system in the world. My name is Sam Davis and I am the General Manager & CEO of the Lake Apopka Natural Gas District in Winter Garden, Florida.

The Lake Apopka Natural Gas District was established pursuant to the provisions of Chapter 59-556, Laws of Florida, Acts of 1959, which became law on June 20, 1959, to provide natural gas within its defined area of service. The District currently operates a municipal natural gas distribution utility with over 600 miles of pipe infrastructure and 4 city gate stations, which serve a 500 square mile area within Lake and Orange Counties, in Central Florida. The District has approximately 15,000 customers, and purchases approximately 550,000 Dekatherms (Dth) of natural gas annually from two suppliers, including its current asset manager. The District also ships approximately 450,000 Dth to transportation customers behind its gate with firm transportation capacity on Florida Gas Transmission Company's interstate pipeline.

I testify today on behalf of the American Pubic Gas Association (APGA). APGA is the national association for publicly-owned natural gas distribution systems. There are currently approximately 1,000 public gas systems located in 36 states. Publicly-owned gas systems are not-for-profit, retail distribution entities owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities. Public gas systems range in size from the Philadelphia Gas Works which serves approximately 500,000 customers to the city of Freedom, Oklahoma which serves 12 customers.

Public gas systems are an important part of their community. Our members' employees live in the community they serve and are accountable to local officials (and their friends and neighbors). Public gas systems are generally regulated by their consumer-owners through locally elected governing boards or appointed officials. However, when it comes to pipeline safety, all of our members must comply in the same manner as investor- and privately-owned utilities with pipeline safety regulations issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA). For most of our members these pipeline safety regulations are enforced by an individual state's pipeline safety agency.

While the manner of safety regulation may be the same, one major difference between the average investor-owned utility and the average public gas system is size: in the number of both customers served and employees. Approximately half of the 1,000 public gas systems have five (5) employees or less. As a result, regulations and rules have a significantly different impact upon a small public gas system than they do upon a larger system serving hundreds of thousands or millions of customers with several hundred or even thousands of employees and an in-house engineering staff.

Safety is the number one issue for public gas systems. No other issue rises to the level of safety for the local distribution company (LDC) that provides natural gas service to its consumers. Gas utilities are the final step in taking natural gas from the production field to the homeowner or business. As such, our members' commitment to safety is second to none and they keep focused on providing safe and reliable service to their customers. A key part of safety is education and public awareness.

Public Awareness

In the Pipeline Safety Improvement Act of 2002, Congress encouraged DOT to issue standards prescribing the elements of an effective public education program. APGA participated in and supported the development of American Petroleum Institute Recommended Practice 1162 which specifies requirements for an effective pipeline public awareness program. In 2006, APGA supported the adoption of RP 1162 by PHMSA as mandatory public awareness regulations and has developed programs to assist member utilities to comply with the rule and gauge the effectiveness of gas safety educational efforts. APGA continues to participate in the revision of RP 1162, which is nearing completion.

Even before there were federal pipeline safety regulations public gas systems conducted public awareness programs. Utilities add odorant to the gas to give it its distinctive smell so that people can smell it at one fifth of its lower flammable limit. Educating the public so that the public recognizes a gas odor and to call the utility if they smell gas is a critical component of each utility's safety program. Another critical component is educating the public about the existence of buried gas lines in our community and the importance of calling the one-call center to have lines marked before digging.

A public gas utility's public awareness issues are different than those of interstate liquid or natural gas pipeline operators. Unlike some liquid pipelines, natural gas utilities transport just a single product, natural gas, so our messages about recognizing and reacting to a possible leak are more straightforward. In addition, our pipelines bring natural gas directly into the homes and businesses in the communities we serve, so our product is something that many in the public encounter in their daily lives. People may not expect there to be oil pipelines or gas transmission pipelines in their neighborhood, but they do know that there are buried gas lines, especially if they have gas service in their home. In 2007 APGA polled nearly 200 thousand randomly selected people in towns and cities served by public gas systems. Over 85 percent were aware that buried gas lines ran through their community and that they should call before digging. And nearly 97 percent believed that they have adequate information about natural gas safety like how to recognize a leak and what they should do if they smell gas in the home. This is even more impressive because nearly half of the people polled were not even gas customers. Even before the new regulations took effect, these results show that public gas utilities were doing a good job communicating gas safety messages.

APGA also assisted its members to comply with the new requirements. In 2006, APGA developed a model public awareness plan that it made available free to members. The APGA website contains samples of public awareness materials that members can download and modify for their own use. APGA also conducts public awareness surveys for participating members. It is called the APGA Gas Overall Awareness Level (GOAL) program and it calls a random sample of customers and non-customers in the service territory of participating utilities. We are conducting our 4th year of surveys, even though the regulations did not require surveys to be completed until this year. The statistics that I cited earlier come from the first year of APGA GOAL surveys. 158 utilities currently use GOAL to measure the effectiveness of their public awareness programs. These utilities are able to compare their numbers with national averages and identify areas for improvement.

Public gas systems had effective public awareness programs before these new rules took effect, they have effective public awareness programs now and APGA believes the current programs are adequate to ensure public awareness of natural gas safety into the future.

Reauthorization

As the Committee considers legislation to reauthorize the Pipeline Safety Act, I want to communicate our support for reasonable regulations to ensure that individuals who control the nation's network of distribution pipelines are provided the training and tools necessary to safely operate those systems. In this regard, over the past several years the industry has had numerous additional requirements placed on it, e.g. Distribution Integrity Management Programs (DIMP), excess flow valves, control room management, operator qualification, public awareness and more. Many APGA members are in the process of working to comply with the administrative burdens of these additional regulations. Given that public gas systems are non-profit systems and in many cases have limited resources, these additional regulations, while important, do impose an additional operational burden upon them. For this reason, APGA strongly supports a clean reauthorization of the Act.

Should the Committee consider revisions to the Act, there are a number of issues APGA would ask the Committee to consider. We urge the Committee to give great consideration before imposing any additional regulatory burdens upon LDC's through this reauthorization effort. In terms of reauthorization, APGA is specifically concerned about an expansion in the requirements for excess flow valves and potential changes in the funding mechanism for PHMSA.

Excess Flow Valves (EFV's)

The PIPES Act included a provision requiring operators to install excess flow valves on new and replaced single residential service that operate year around at or above 10 pound-force per square inch gauge. Exceptions are provided if EFVs are not available, if it is known there are contaminants in the system that would cause the EFV to fail or if it is known there are liquids in the system. Prior to this installation requirement, there was a customer notification rule in place that required gas systems to make their customers aware of the availability of EFVs and install an EFV if the customer was willing to pay installation costs. It was limited to new and renewed services because EFVs are installed underground where the "service line" to a residence connects to the gas main. If the ground or pavement over the main is already open and a new connection to the main is being installed, adding an EFV at that time costs just a fraction of what it would cost to install or replace an EFV when no other work is planned at the main-service connection.

Each EFV has a preset closure flow rate. Once installed on a service line it will prevent gas from flowing at any flow rate higher than its preset closure flow rate. There is no way short of replacing the EFV to change its closure flow rate. This is typically not an issue with EFVs on residential service lines since the gas demand to a residence does not typically change drastically. A residence will have a relatively constant and predictable gas demand over its lifetime so the EFV can be sized accordingly.

However, APGA is greatly concerned about an expansion of the EFV requirements to commercial and industrial businesses and multifamily residences. A commercial building, unlike a residential unit, may see huge changes in gas demand as tenants in the space move in and out. For example, a space in a strip mall that today is occupied by a shoe store could be converted to a restaurant or bakery tomorrow. The gas demand could double or triple. That could require replacing the meter, regulator and EFV. Since the first two items are above ground, replacement is relatively inexpensive. However, the EFV is buried and replacing it would be very costly, often hundreds of times the initial cost of the EFV. To address this problem, an operator could install a grossly oversized EFV with closure flow at or near the free flow limits of the service line. However, a valve so oversized would probably not close even if the line were ruptured, defeating the purpose of having an EFV on the line in the first place.

The same and additional issues apply to installing EFVs on service lines to industrial customers. The flow rates and operating pressures to many industrial customers exceed the capacity of commercially available EFVs.

The potential costs of a false closure of the EFV can be significantly greater for a commercial or industrial customer than a residence. Both would suffer business losses in addition to the inconvenience of no heat or hot water. An evening's loss of business to a restaurant could run into the thousands of dollars, however some industries such as microprocessor chip manufacturers could see millions of dollars of product ruined by the loss of temperature control required by their processes.

The industry has experience with EFVs designed for typical flow rates to single-family residences, but has little or no experience with EFVs designed for the higher flow rates that would exist at multi-family residences. The time and resources to restore service after a false closure of an EFV to a multi-family residence would be many times more than if the same problem occurred at a single residence.

PHMSA has established a working group of government, industry and public experts to study the issues related to installing large volume EFVs on other than single residential services. We encourage Congress to allow this stakeholder working group to proceed towards making specific recommendations on this issue.

Funding of User Fees

Under the current formula, user fees for funding PHMSA are collected by natural gas transmission operators from their downstream customers. User fees are mandatory costs a natural gas transmission operator can pass through to customers in its cost-of-service. This allowable pass-through treatment is similar to other mandatory safety program costs. As a result, it is natural gas distribution operators that pay the user fees to transportation operators in their transportation rates, and it is the natural gas transmission operators that, after collecting the user fees from its customers, pass those fees to PHMSA in the annual pipeline safety user fee assessment.

APGA supports this current formula and we believe it has worked well over the years. APGA is strongly opposed to any changes in the current formula that would shift the user fees to the LDC's. The pipelines currently build these fees into their costs and if they believe they are not recovering the costs, they have an option provided to them under Section 4 of the Natural Gas Act to file for a rate increase with the Federal Energy Regulatory Commission. Since the Federal Energy Regulatory Commission has never turned down a request to include pipeline safety user fees in transportation rates charged by interstate pipelines, the decision whether or not to pass through all or a portion of the user fees to its customers is completely within the pipeline's discretion. If for business reasons a natural gas transmission operator makes a business decision not to pass this safety cost through to one or more of its customers (e.g., it wishes to discount rates to certain customers, avoid filing a rate case, etc.), any consequence arising from that decision should be borne by that natural gas transmission operator.

Shifting fees to distribution would mean that LDC customers would pay both the user fees assessed to the LDC AND the fees passed on in transportation rates charged by their pipeline supplier. Gas customers served directly from a transmission line would pay a lesser amount of user fees per unit of gas than if the same customer were served through the LDC. The current user fee system also greatly simplifies fee collection as there are fewer transmission pipeline operators than there are LDCs. The current system of user fee collection has worked well for over 20 years.

Integrity Management of Low Stress Transmission Lines

Currently, low stress transmission lines (a line operating below 30 % of the specified minimum yield stress) operated by distribution systems are regulated under the Transmission Integrity Management Program (TIMP). It is APGA's position that those pipelines should be regulated under the Distribution Integrity Management Program (DIMP). The benefit of handling this under DIMP is that TIMP focuses on finding mainly corrosion and mechanical damage problems. The DIMP rule addresses these threats but also requires distribution operators to consider other threats to integrity including excavation, natural forces, incorrect operations and more. When a high stress line corrodes it can suddenly rupture, whereas a low stress line would just start leaking, and the leak would get progressively worse over time. The utility has time to find it through ongoing leak surveys and patrols and fix it before it threatens public safety. Since the big issue with distribution is 3rd party damage, and PHMSA's data show that corrosion is the least likely of the 8 threats addressed by DIMP, the costly corrosion inspections required by TIMP on low stress transmission lines are of questionable benefit.

Conclusion

Natural gas is critical to our economy, and millions of consumers depend on natural gas every day to meet their daily needs. It is critical that they receive their natural gas through safe, affordable and reliable delivery by their LDC. Public gas systems are proud of their safety record and safety has been, and will continue to be, their top priority. Approximately 1,000 villages, towns, cities, counties and utility districts across the US are served by locally-owned, non-profit, public gas utilities. Like most local governments, the current economic conditions have resulted in lower tax revenues and higher costs to provide services to their citizens. Unlike investor owned pipelines and utilities, costs imposed on public gas systems cut into other services provided by the local government including fire, police and other public safety programs. Additional costs imposed on these local governments by additional regulation of their natural gas utilities needs to strike a careful balance between costs and benefits from any new mandates. We look forward to working with the Committee towards reauthorization of the Pipeline Safety Act.

Answers of Sam Davis to Follow-up Questions from the House Subcommittee on Railroads, Pipelines, and Hazardous Materials July 21st Hearing on "Pipeline Safety: Public Awareness and Education".

Q: Has the current mandatory public awareness program done anything to enhance public awareness, reduce incidents and promote the protection of the distribution infrastructure?

A: Public awareness programs have been mandatory for distribution systems since 1970 when Federal pipeline safety regulations first took effect. Even before 1970 most LDCs had public awareness programs because it is good business practice. APGA's 2007 survey showed that these programs had already achieved a high level of awareness by the public. Never-the-less, the creation of the 811 call before you dig number, APGA believes, has resulted in enhanced public awareness, reduced incidents and protection of distribution infrastructure.

Q: The NTSB has recently raised concerns about PHMSA's oversight of owner operator public awareness and education programs. Does APGA share these concerns? If not, why not?

A: We believe that NTSB was referring to PHMSA's oversight of interstate pipeline operators' public awareness programs. As we pointed out in our testimony, the public awareness challenges of a local distribution company are significantly different than those of an interstate pipeline operator. Oversight over the public awareness programs of distribution operators is the responsibility of state pipeline safety agencies, not PHMSA. Feedback from APGA members indicate that compliance audits by state agencies include auditing compliance with the new public awareness rule.

Q: Do you think that PHMSA's 811 program has helped raise awareness?

A: Yes. Having a common number to call anywhere in the US has made it possible to conduct national awareness campaigns about call before you dig and APGA believes it has been a great success.

Q: Why are excess flow valves buried and not located immediately before the meter or any of the aboveground piping where they would be immediately accessible?

A: EFVs only work if the piping is ruptured between the EFV and the meter, therefore if the EFV were located immediately before the meter or in the above ground piping just before the meter, none of the buried piping from the main to the EFV would be protected by it.

Q: Does APGA or Lake Apopka have any experience with excess flow valves that allow insertion from a residence to the gas main through the existing service line?

A: APGA is aware that UMAC is marketing a system to install EFVs without digging, however neither Lake Apopka nor APGA have any experience with this system. Our understanding is that it can only install, not remove, EFVs, therefore it would not solve the problem of replacing an EFV that becomes undersized due to changes in customer load.

Pipeline Safety TRUST Credible. Independent. In the public interest.

Testimony of
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Presented by

Rick Kessler, Vice President

BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
TRANSPORTATION AND INFRASTRUCTURE COMMITEE
U.S. HOUSE OF REPRESENTATIVES

HEARING ON

Pipeline Safety Public Awareness and Education

July 21, 2010

Good morning, Chairwoman Brown, Ranking Member Shuster and Members of the Subcommittee. Thank you for inviting me to speak today on the important subject of pipeline safety. My name is Rick Kessler and I am testifying today in my purely voluntary, uncompensated role as the Vice President of the Pipeline Safety Trust. My involvement and experience with pipeline safety stems from my years as one of the primary staff members on such issues in the House of Representatives and my subsequent work with the Pipeline Safety Trust.

The Pipeline Safety Trust came into being after the 1999 Olympic Pipe Line tragedy in Bellingham, Washington that left three young people dead, wiped out every living thing in a beautiful salmon stream, and caused millions of dollars of economic disruption. After investigating this tragedy, the US Department of Justice (DOJ) recognized the need for an independent organization that would provide informed comment and advice to both pipeline companies and government regulators, and would provide the public with an independent clearinghouse of pipeline safety information. The federal trial court agreed with the DOJ's recommendation and awarded the Pipeline Safety Trust $4 million which was used as an initial endowment for the long-term continuation of the Trust's mission.

The vision of the Pipeline Safety Trust is simple. We believe that communities should feel safe when pipelines run through them, and trust that their government is proactively working to prevent pipeline hazards. We believe that local communities who have the most to lose if a pipeline fails should be included in discussions of how best to prevent pipeline failures. And we believe that only when trusted partnerships between pipeline companies, government, communities, and safety advocates are formed, will pipelines truly be safer.

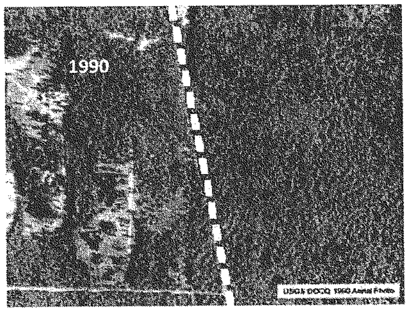
We also believe that trust in pipeline safety increases in proportion to the amount of verifiable scientific information that is readily available for all concerned to review. Such information must form the basis for any and all legitimate public awareness and education programs about pipeline safety. For the most part, outside review and involvement increases the confidence in pipeline safety as those with concerns learn that pipelines truly are a safe way to transport fuels. In those instances when safety has lapsed, such review will help to more quickly correct the situation and create a push for even greater levels of safety. Consequently, one of the Trust's highest priorities is to make available as much relevant and accurate information as possible for independent review. In sum, we believe the public has a right to know about the safety of pipelines that affect their communities.

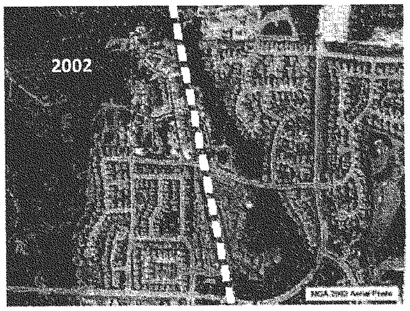
In my testimony this morning I will cover the following areas that are still in need of improvement:

- **Educating Local Government through the Pipelines and Informed Planning Alliance (PIPA)**
- **Increasing Awareness and Education by Continuing Implementation and Funding of Technical Assistance Grants to Communities**
- **Making Public Awareness Programs Meaningful and Measurable**
- **Ensuring that PHMSA's "CATS" Program Stays Well Focused**
- **Developing Incentives for State Pipeline Safety Advisory Committees to Better Involve the Public**
- **Continuing Important Damage Prevention Effort**
- **Continuing to Make More Pipeline Safety Information Publicly Available**

Educating Local Government through the Pipelines and Informed Planning Alliance (PIPA)

Across the country encroachment of new development near pipelines (as seen below) has created increasing conflicts. Local government is the entity with zoning and permitting authority to help solve these problems.





Section 11 of the Pipeline Safety Improvement Act of 2002 included a requirement that PHMSA and FERC provide a study of population encroachment on and near pipeline rights-of-way. That requirement led to the Transportation Research Board's (TRB) October 2004 report Transmission Pipelines and Land Use[1], which recommended that PHMSA "develop risk-informed land use guidance for application by stakeholders." PHMSA formed the Pipelines and Informed Planning Alliance (PIPA) in late 2007 with the intent of drafting a report that would include specific recommended practices that local governments, land developers, and others could use to increase safety when development was to occur near transmission pipelines.

After more than two years of work by more than 150 representatives of a wide range of stakeholders, the draft report and the associated 46 recommendations are finally due to be released sometime this summer. This will be the first time information of this nature has been made widely available to local planners, planning commissions, and elected officials when considering the approval of land uses near transmission pipelines. We fully agree with the sentiment of Congress in the Pipeline Safety Improvement Act of 2002 that,

> ***"The Secretary shall encourage Federal agencies and State and local governments to adopt and implement appropriate practices, laws, and ordinances, as identified in the report, to address the risks and hazards associated with encroachment upon pipeline rights-of-way…"***

Some communities that were involved in the drafting of the PIPA report have already moved forward on implementing some of the recommendations. For example, Fort Worth Texas has implemented a new mapping effort based on the PIPA recommendations so their planners and public works people have a clearer idea of the location of pipelines in their community. The Association of Washington Cities has undertaken an effort to help educate all the planners in Washington State about how to do better planning near pipelines. One piece of their effort was the creation of an entire website[2] devoted to planning near pipelines. And Brookings County, South Dakota recently adopted a Transmission Pipeline Risk Reduction Overlay District based on the PIPA recommendations. That effort was recently highlighted in an article in County News from the National Association of Counties, which we have attached at the end of this testimony.

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[1] *trb.org/publications/sr/sr281.pdf*

[2] http://www.mrsc.org/Subjects/PubSafe/transpipes.aspx

Our point is that once local government learns about the ways it can help ensure pipeline safety it may well act. Unfortunately there currently is no plan or funding to adequately disseminate the recommendations of PIPA to ensure that local governments across the country have any knowledge about how they can use their zoning and permitting authority to partner in efforts to increase pipeline safety. To move forward with this important effort, the Trust asks that this year Congress authorize --just as was authorized in PIPES for the successful promotion of the 811 "One Call" number-- $500,000/year to promote, disseminate, and provide technical assistance regarding the PIPA recommendations. Only through such a PIPA implementation effort will local government become aware of its abilities to better protect pipelines and the people living near them.

Increasing Awareness and Education by Continuing Implementation and Funding of Technical Assistance Grants to Communities

Over the past year and a half, PHMSA has finally started the implementation of the Community Technical Assistance Grant program authorized as part of the Pipeline Safety Improvement Act of 2002 and clarified in the PIPES Act. Under this program, more than a million dollars of grant money has been awarded to communities across the country that wanted to hire independent technical advisors so they could learn more about the pipelines running through and surrounding them, or be valid participants in various pipeline safety processes.

In the first round of grants, PHMSA funded projects in communities in seventeen states from California to Florida. Local governments gained assistance so they could better consider risks when residential and commercial developments are planned near existing pipelines. Neighborhood associations gained the ability to hire experts so they could better understand the "real" versus the imagined issues with pipelines in their neighborhoods. And farm groups learned first-hand about the impacts of already-built pipelines on other farming communities so they could be better informed as they participate in the processes involving the proposed routing of a pipeline through the lands where they have lived and labored for generations. All of the examples of local government implanting the PIPA recommendation we mentioned earlier were funded through these technical assistance grants. Overall –despite the unacceptably long delay in implementation-- we view the first round of this new grant program as a huge success.

However, ongoing funding for these grants is not clear, so the Trust asks that you ensure the reauthorization of these grants to continue to help involve those most at risk if something goes wrong with a pipeline. We further ask that you consider raising the cap on the amount of an individual grant, removing the limitation on funding sources for the grants, and –most importantly-- do whatever is necessary to ensure that the authorized funds are actually appropriated.

One area that should be considered with any new grant program is the amount of promotion and time it takes to get the word out about new sources of grant money. The Pipeline Safety Trust worked hard during the first round to promote this program to ensure that local government and citizen groups around the country knew about it and applied. Such targeted promotion, especially for a new grant program, is needed to ensure that PHMSA receives enough strong grant applications to choose from. During the application period for the second round of these grants, promotion was not as well organized and we have since learned from several groups around the country that they did not apply because they had no idea the grants were available again. While this will certainly correct itself as the knowledge of this grant program grows, we hope that PHMSA will improve its promotion and that Congress will take the long-term view of the value of this program while it grows to maturity.

Finally, we urge PHMSA to resist the pressure to spend the money on applications that do not meet the Congressional intent of the program. While the second round of grants have not yet been announced, we have heard from some local governments around the country that municipal gas utilities have tried to apply for these grant funds to undertake pipeline projects that are clearly part of their existing pipeline maintenance and operation requirements. Funding municipal utilities with this community technical assistance grant money is clearly outside of the intent of what Congress approved this program for, and will cause a rush by such utilities that will overwhelm this limited funding. In creating the grant program in 2002, Congress explicitly excluded "for-profit entities" from qualifying for grants to ensure that the program's monies reached its intended audience of local governments and nonprofit citizen groups, NOT pipeline companies. That some municipally-owned companies may be seeking to exploit a possible loophole in the law to grease their own operations unfairly at the expense of local governments, legitimate citizen groups, and competitor companies who are disqualified from receiving funding under this program is shameful. It is unfortunate that we must ask this Committee and Congress clarify in statute –and continue to drive home in statements-- that this grant program is not to fund --and never was supposed to fund-- the activities of any pipeline operator, public or private, regardless of its status under the tax code.

Making public awareness programs meaningful and measurable

The Pipeline Safety Improvement Act of 2002 required pipeline operators to provide people living and working near pipelines basic pipeline safety information, and gave PHMSA the authority to set public awareness program standards and design program materials. In response to this Congressional mandate, PHMSA set rules that incorporated by reference the American Petroleum Institute's (API) recommended practice (RP) 1162 as the standard for these public awareness programs. According to RP 1162's *Foreword* (page iii) of API recommended practice, the intended audiences were not represented in the development of RP 1162, though they were allowed to provide "feedback." The omission of representatives from these audiences from the voting committee reduces the depth of understanding the RP could have had regarding the basic messages, barriers and incentives for such programs, and undercuts the credibility of the recommended actions. **Even the limited "feedback" that the affected community is allowed is further limited by the requirement that to review the recommended practice (now part of federal regulations) a community member would have to purchase it from API for $93!**

For an example of how this one-sided process may have changed the effective outcome, consider how public awareness guidelines that are created by the pipeline industry will develop basic messages that are very different in tone than equally accurate messages developed by the affected community. If the real goal is to get the potentially affected public to read all the information, then the basic lead-in message is very important to ensure the rest of the information is ever read. Below on the left is an example of the basic lead-in message found in all of the mass mailed public awareness materials we have seen that came out of this industry controlled process. On the right is an equally accurate message. Which message is more apt to get people to read the rest of the awareness materials about how to protect themselves?

"According to National Transportation Safety Board statistics, pipelines are the safest method for transporting natural gas and petroleum products. Pipelines have a safety record unparalleled by any other mode of transporting energy products"

OR

Every day and a half in this country there is a significant pipeline incident, and every 5 or 6 days a person is killed or injured because of such a pipeline incident. Do you know where pipelines are in your area and what to do if something goes wrong?

The public awareness program regulations--49 CFR § 192.616 and 49 CRF § 195.440—mandate that operators comply with API RP 1162. In essence, this amounts to the drafting of federal regulations regarding public awareness without the equal participation of the public stakeholders the regulations are meant to involve. With non-technical subject matter, such as this recommended practice deals with, it is difficult to justify excluding the intended audiences from the process and allowing the regulated industries to write their own guidelines. With the above example in mind, consider how different a public awareness program might look if the affected public was in charge of its design instead of an industry with conflicting motives.

The public awareness requirements represented a huge and important undertaking for the pipeline industry, and as such the effectiveness of it will evolve over time. We were happy that the rules included a clause that set evaluation requirements that require verifiable continuous improvements. While we understand that the initial years of this program have been difficult, we have been disappointed in some of these efforts as they were clearly farmed out to contractors to meet the letter of the requirement instead of the intent of the requirement. Recently, the National Transportation Safety Board cited the failure of these programs in the investigation report[3] of a deadly pipeline explosion in Mississippi that killed a girl and her grandmother.

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[3] http://www.ntsb.gov/publictn/2009/PAR0901.htm

An evaluation of the first five years of this program is due this year, and API has been working on an update of this recommended practice for some time now. One of the draft proposals from API is to remove the requirement to measure whether the programs have led to actual changes in behavior. PHMSA recently held a workshop on these public awareness programs, and ways to incorporate an effectiveness review into pipeline inspections. We hope that Congress will keep a close eye on the discussions of this issue over the coming months and be prepared to step in and clarify that the intent of this program is to change the behavior of the intended audiences to make pipelines safer, not to count how many innocuous brochures can be mailed.

Ensuring that PHMSA's "CATS" Program Stays Well Focused

PHMSA's Community Assistance and Technical Services (CATS) representatives serve as the frontline to provide information and education to a wide variety of stakeholders including the general public. Currently there are eleven CATS representatives around the country who serve as the first point of contact for the public and local government who have questions about the pipelines in their area. Clearly the best and most effective form of education is when a person can have their specific concerns addressed by someone who can answer them in a professional non-biased way. That is the important service that CATS provides, and The Pipeline Safety Trust has been a huge supporter of this program ever since it was created to fill the "local" void in this federal agency.

Our main concern with this program is whether is has the resources and focus necessary. Just as it is important that there are adequate numbers of inspectors to ensure compliance with regulations it is also important that there are adequate numbers of CATS representatives to ensure positive communication with the various affected communities. It would appear to us that many times the CATS are called upon to fill work assignments that fall outside of their mission of "facilitating clear communications among all pipeline stakeholders." If Congress shares our vision of increasing pipeline safety through better information availability, and clear communication of that information, then we recommend that you ensure that PHMSA provides this valuable program with adequate resources and personnel, and doesn't continually divert them to other priorities.

Developing Incentives for State Pipeline Safety Advisory Committees to Better Involve the Public

In the Pipeline Safety Improvement Act of 2002, Congress providing one incentive for states to more actively raise awareness, educate and involve the public. Section 24 of the Act stated:

> *"Within 90 days after receiving recommendations for improvements to pipeline safety from an advisory committee appointed by the Governor of any State, the Secretary of Transportation shall respond in writing to the committee setting forth what action, if any, the Secretary will take on those recommendations and the Secretary's reasons for acting or not acting upon any of the recommendations."*

This simple paragraph provided the states with an option to not only create an advisory body to better educate and involve the public, but also a route to get timely answers from the Secretary of Transportation to pipeline safety concerns that such an advisory body may have. This ability to get answers from DOT within 90 days provides more timely feedback on concerns than most state regulatory agencies report available for their own requests.

This little known option of creating Governor-appointed pipeline safety advisory committees to increase public awareness and education has not been promoted by PHMSA at all. In fact, in at least one case we are aware of, PHMSA penalized a state that did create such a committee by refusing to allow federal pipeline safety grant funds to that state to be used to cover the small costs of staffing such a public pipeline safety advisory committee.

If Congress believes that the public should be better educated and involved regarding pipeline safety issues then we recommend that Congress direct PHMSA to actively promote the creation of such Governor-appointed pipeline safety advisory committees[4], and provide the added incentive that for any state that does create such a committee an additional $25,000 in federal grant money will be available for the coordination and staffing of such a committee.

Continuing Important Damage Prevention Efforts

Damage to pipelines from people digging is still one of the leading causes of pipeline incidents. Damage prevention is one of the areas where increased awareness and education of a variety of public stakeholders (contractors, excavators, public works officials, equipment rental operators, etc) can have a direct impact on reducing the number of pipeline incidents. During the past two reauthorization cycles Congress has provided significant resources to help get the national Common Ground Alliance up and functioning as well as for promotion of the national 811 – Call Before You Dig number. These efforts need to continue and Congress should ensure they have the resources needed to do the job they have been charged with.

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[4] An example of one such Governor-appointed committee can be found at: http://www.wutc.wa.gov/pipeline/ccops

It also is important to ensure that these public awareness efforts are spending the money in well-targeted and effective ways. Since many of these efforts are controlled by the involved industries, it is all too easy to target messages in ways that direct the concerns and blame away from themselves. Message targeting can only be done effectively if there is adequate data on who is damaging pipelines so the awareness efforts can be directed at the correct audience. It makes little sense to direct hundreds of thousands of dollars of damage prevention messages at children and home owners if in reality it is other utility contractors (telephone, cable, water, sewer, electric) who are actually doing most of the damage. The Common Ground Alliance and a few states have started to collect the data necessary to make better targeting decisions, but there is still a long way to go.

If Congress wants to ensure that money provided for these damage prevention efforts is being well spent, we suggest that you direct GAO or another appropriate agency to audit the effectiveness of current damage data collection, and report on what that data reveal regarding the cause of these types of incidents.

Continuing to Make More Pipeline Safety Information Publicly Available

Perhaps the key issue regarding increasing public awareness and education is to ensure that the information in which the public already has an interest is easily available.

Over the past two reauthorization cycles, PHMSA has done a good job of providing increased transparency for many aspects of pipeline safety. In the Trust's opinion, one of the true successes of PIPES has been the rapid implementation by PHMSA of the enforcement transparency section of the Act. It is now possible for affected communities to log onto the PHMSA website (http://primis.phmsa.dot.gov/comm/reports/enforce/Enforcement.html) and review enforcement actions regarding local pipelines. This transparency should increase the public's trust that our system of enforcement of pipeline safety regulations is working adequately or will provide the information necessary for the public to push for improvements in that system. PHMSA has also significantly upgraded its incident data availability and accuracy, and continues to improve its already excellent "stakeholder communication" website.

One area where PHMSA could go even further in transparency would be a web-based system that would allow public access to basic inspection information about specific pipelines. An inspection transparency system would allow the affected public to review when PHMSA and its state partners inspected particular pipelines, what types of inspections were performed, what was found, and how any concerns were rectified. Inspection transparency should increase the public's trust in the checks and balances in place to make pipelines safe. Just as Congress required PHMSA to institute Enforcement Transparency in the PIPES Act of 2006, The Trust hopes you will require similar Inspection Transparency this year.

There is also a need to make other information more readily available. This includes information about:

- **High Consequence Areas (HCAs).** These are defined in federal regulations and are used to determine what pipelines fall under more stringent integrity management safety regulations. Unfortunately, this information is not made available to local government and citizens so they know if they are included in such improved safety regimes. Local government and citizens also would have a much better day-to-day grasp of their local areas and be able to point out inaccuracies or changes in HCA designations.

- **State Agency Partners.** States are provided with millions of dollars of operating funds each year by the federal government to help in the oversight of our nation's pipelines. While there is no doubt that such involvement from the states increases pipeline safety, different states have different authority, and states put different emphasis in different program areas. Each year PHMSA audits each participating state program, yet the results of those program audits are not easily available. We believe that these yearly audits should be available on PHMSA's website and that some basic comparable metrics for states should be developed.

- **Emergency Response Plans.** As has been learned in the recent Gulf of Mexico tragedy, it is crucial that these types of spill response plans are well designed, adequately meet worst-case scenarios, and use the most up-to-date technologies. While 49 CFR §194 requires onshore oil pipeline operators to prepare spill response plans, including worst case scenarios, those plans are difficult for the public to access. To our knowledge the plans are not public documents, and they certainly are not easily available documents.

The review and adoption of such response plans also misses a great opportunity to educate and increase awareness among the public. Currently the process is closed to the public. In fact PHMSA has argued that they are not required to follow any public processes, such as NEPA, for the review of these plans. If the Gulf tragedy has taught us nothing else it should have taught us that the industry and agencies could use all the help they can get to ensure such response plans will work in the case of a real emergency.

It is always our belief that greater transparency in all aspects of pipeline safety will lead to increased awareness, involvement, review and ultimately safety. That is why we believe Congress should make citizen right to know provisions a priority for inclusion in this pipeline reauthorization. There are many organizations, local and state government agencies, and academic institutions that have expertise and an interest in preventing the release of fuels to the environment. Greater transparency would help involve these entities and provide ideas from outside of the industry. The State of Washington has passed rules that when complete spill plans are submitted for approval the plans are required to be made publicly available, interested parties are notified, and there is a 30 day period for interested parties to comment on the contents of the proposed plan. We urge Congress to require PHMSA to develop similar requirements for the adoption of spill response plans across the country, and that such plans for new pipelines be integrated into the environmental reviews required as part of the pipeline siting process.

Conclusion

Thank you again for this opportunity to testify today. The Pipeline Safety trust believes that increased public awareness, education and involvement in pipeline safety issues will ultimately make pipelines even safer. Unfortunately in the past these efforts have not been a high priority for regulatory agencies and certainly not the pipeline industry, and oftentimes these efforts are not well funded, targeted, or promoted. The Pipeline Safety Trust hopes that you will closely consider the ideas and concerns we have raised today for ways to increase awareness and education. If you have any questions now or at anytime in the future, the Trust would be pleased to answer them and, of course, we stand ready to work with you and your colleagues on reauthorizing the pipeline safety laws that our so important to ensuring the well-being of millions of Americans and the environment that is their birthright.

NACo National Association of Counties
County News
The Voice of America's Counties

Grant helps protect local pipelines and communities

By James Davenport
PROGRAM MANAGER, The National Association of Counties
http://www.naco.org/newsroom/countynews/Current%20Issue/July5,2010countynews/Pages/Granthelpsprotectlocalpipelinesandcommunities.aspx

The pipeline system is considered the most efficient and safest way to transport natural gas and petroleum products across the country.

Over the past several decades, most of the pipelines in the transmission system were placed in rural and isolated areas in order to better protect the pipeline and assure minimal impacts to local communities. That's no longer the case in many areas.

Increased development has brought people and pipelines much closer. Though this may pose some safety challenges, county governments have the resources and tools to help them reduce the risk of pipeline explosions or leaks while at the same time reducing the chance of damage to transmission pipelines.

Brookings County, S.D. was awarded a Technical Assistance Grant (TAG) through the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) to assist it in protecting existing natural gas and transmission pipelines in the county, and the residents who live near these pipelines.

PHMSA's TAG program provides grants to local communities and organizations for technical assistance related to pipeline safety issues. Technical assistance means engineering or other scientific analysis of pipeline safety issues. The funding can also be used to help promote public participation in official proceedings.

Through this opportunity, Brookings established two objectives:

- develop a Pipeline Risk Reduction Overlay District, and
- disseminate a safety brochure from Brookings County detailing the procedures to apply for a building permit and the applicable setback requirements from transmission pipelines.

Transmission Pipeline Risk Reduction Overlay District

The purpose of the Transmission Pipeline Risk Reduction Overlay District is to protect public health and safety by reducing the likelihood of pipeline damage and reducing the adverse impact of pipeline failures through risk-based land management decisions.

The overlay district consists of a consultation zone and planning zone designation as recommended by a pipeline technical assistance guidance document.

The purpose of the consultation zone is to identify the need for communication between property developers or owners within Brookings County and pipeline operators when new development is planned within 660+ feet of an existing transmission pipeline.

When a building permit is requested within the boundaries of the Transmission Pipeline Risk Reduction Overlay District, the person requesting a permit will be told that the building is being constructed near a transmission pipeline. A pipeline safety brochure will be provided along with the building permit. The permit office will notify the pipeline operator of the building permit request, the type and size of building. The property developer or owner must then initiate a consultation with the transmission pipeline operator as early as possible in the development planning process.

The purpose of the planning zone is to enforce specific requirements when new development is planned within the planning zone distance of an existing pipeline. This distance depends on certain characteristics (type, size, material) of the pipeline.

When an individual or organization requests a building permit and the location is within the planning zone, then the permit office staff will request a detailed site plan. The building permit requestor will be given a brochure with the contact information for the appropriate gas company's personnel and the recommended land management practices for new development near existing transmission pipelines.

The Transmission Pipeline Risk Reduction Overlay District will be incorporated into Brookings County's Geographic Information Systems mapping and used primarily when issuing zoning and building permits to facilitate discussions among developers, landowners and pipeline operators.

The county chose to develop the overlay zone instead of establishing set back standards designated for each land use classification including lake properties and parks, natural resource areas, commercial districts and agricultural sites. The overlay zone was developed similar to the aquifer protection district already in place in the county.

Safety Brochure

A safety brochure was developed and made available to the public. In addition, the brochure was distributed to specific landowners informing them that their property was near a transmission pipeline along with an invitation to attend a public meeting that discussed procedures to apply for a building permit and the applicable setback requirements.

The brochure was designed as a four-page handout and provides background information behind the requirements of the Pipeline Overlay Zone. It also provides contact information for the two companies that have or will have natural gas pipelines in the county.

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Responses to Chairwoman Brown's additional questions from the July 21, 2010 hearing on Pipeline Safety Public Awareness and Education.

1. The NTSB has recently raised some concerns about PHMSA's oversight of owner/operator public awareness and education programs. Does the Pipeline Safety Trust have any recommendations as to how PHMSA can improve the oversight and enforcement of public awareness programs?

The Pipeline Safety Trust has reviewed both the current industry standard - API RP 1162, which was incorporated by reference into the federal pipeline regulations, and the recent changes to that standard. We also spoke at a recent PHMSA workshop in Houston about ways to improve public awareness, so people living and working near pipelines pay better attention to the pipelines in their area before an incident occurs.

We believe the development of API RP 1162 regarding public awareness was a flawed process from the beginning for two main reasons:

1. The stakeholder groups to whom these practices are targeted-- first responders, local government officials, excavators, people living and working near the pipeline—were not invited to participate in their development and adoption in any meaningful way: for the most part, representatives of some of these targeted audiences were asked only to comment on strategies put forth by an industry work group.

   These targeted groups have different concerns than industry, and receive and respond to messages in different ways than industry. Consequently, had the target groups been significantly involved in the development and adoption of API RP 1162, the Trust thinks its recommended practices would have a much different focus. As it stands, we think many pipeline operators use the public awareness program requirements to promote the safety of transporting natural gas and hazardous liquids by pipeline to the public instead of engaging in meaningful activities to educate the public about the risks of this transportation mode and ways to mitigate them.

   Unfortunately, the "fatal flaw" that plagued the initial development and adoption of this Industry standard—the inability of the target audiences to have a significant role in what its recommended practices should be—has not been remedied and API RP 1162 is now being revised in essentially the same way. So the Trust does not expect these revisions to adequately meet the Congressional public awareness program mandate.

2. API has no particular expertise in developing balanced educational/awareness programs. In developing and implementing the public awareness program requirements it would seem to us PHMSA should have used a more independent source, one with public outreach and education expertise.

PHMSA and its state partners are now setting up the protocols for inspecting and amending these public awareness programs. These upcoming inspections have the ability to address the concerns that NTSB has raised and steer these programs in the right direction. For this to happen we believe the following needs to occur:

- First and foremost, at least part of the evaluation for these programs has to be focused on **whether the programs have actually changed behavior** (less excavator damage, more fire fighter training, increased use of 811 after outreach, etc). To date, too much of the evaluation has been based on the number of contacts made, number of brochures mailed, etc. These types of metrics, however, tell us very little about whether a public awareness program is effective and whether the resources allocated to it are being used wisely.

- The messages need to be better targeted at the specific audiences (first responders, local government officials, excavators, people living near the pipeline) instead of being so generic that the recipients pay no attention to them.

- Pro-pipeline messages that downplay or obscure the risks of pipelines should be removed since they may serve as a barrier to recipients paying attention to the primary critical safety messages.

- Information about incidents, enforcement and inspections should be specific to the pipeline company sending the information, not national averages that may not provide a true picture of the company's performance.

- New information should be included as it becomes available. An example would be information to local government officials about where to find the Pipeline and Informed Planning Alliance report on recommended practices for planning near pipelines.

- Some vendors and companies are currently using a troubling evaluation technique as part of their mail out information. In this mail out information are included mail back cards or links to online surveys where financial incentives are offered to those who will take part in the "evaluation" while they hold the information containing the bulleted answers. Little credence should be given to evaluation data generated by handing people the answers to a quiz and then bribing them to regurgitate the answers back while they are still holding the answers in their hand.

2. The Pipeline and Hazardous Materials Safety Administration (PHMSA) has incorporated by reference (in full or in part) 69 separate industry standards into the Pipeline Safety Regulations and 151 separate industry standards into the Hazardous Materials Safety Regulations. For example, in PHMSA's Final Rule required under

Public Law 107-355, PHMSA stated that all pipeline operators would have to follow the guidance provided in the American Petroleum Institute's (API) Recommended Practice 1162 (API 1162), Public Awareness Programs for Pipeline Operators. This standard makes recommendations on what pipeline operators may want to consider including in their educations programs. However, this document is not accessible to the public unless it purchases it from API for $93. What safety concerns does this raise for the Pipeline Safety Trust?

As noted in our testimony, the Trust has many concerns with the apparently excessive extent of PHMSA's use of this practice, there are two basic safety concerns we have with the incorporation of industry developed standards into regulations.

1. Most industry led standard setting processes are controlled by those that work within the industry that the standards may someday be used to regulate. While we believe that the industry truly does care about safety, there certainly is a clear conflict of interest if the industry, which also cares deeply about the cost to their short-term bottom line, is allowed to decide how best to regulate itself. These processes are based on consensus style votes where good safety practices may be discarded for no other reason than a minority of the industry "can't live with it."

   While it may be true that the industry has valuable expertise in some technical areas (which is not the case with API RP 1162), it is incumbent on the government to ensure that no standard should be incorporated wholesale into government regulations that has not cultivated multiple perspectives. PHMSA should be required to ensure that enough independent representatives are part of these standard setting exercises to ensure that after a reasoned debate, that optimizes the balance between safety and cost, we are getting the best safety standards, not just the safety standards based on what the industry is willing to live with or pay for.

2. We also are greatly concerned when members of the public must pay to review what the federal regulations require. Such payments make it difficult or impossible for those outside of the regulated industry or the regulators to even know what is required, which we believe hinders the development of the best safety regulations.

3. You state that the Pipeline Safety Trust believes that communities should feel safe when pipelines run through them, and trust their government is proactively working to prevent pipeline hazards, and that local communities who have the most to lose if a pipeline fails should be included in discussions of how best to prevent pipeline failures. What more should Congress do in this area?

There are a number of activities and programs that Congress can continue to support that will help provide a larger role in ensuring pipeline safety by those who could be affected by pipeline failures.

- First and foremost, PHMSA needs to be continually encouraged and, in some instances, statutorily required to make as much information as possible about specific pipelines publicly available. PHMSA has done a good job in the past 10 years increasing the transparency of pipeline safety issues, but there are still things that need to be added. We understand that PHMSA will soon release a new website that will allow people to review the types of inspections that companies have undergone, along with the outcome of those inspections. The website will also enable people to compare the safety outcomes of different specific pipeline companies. This will be a welcome addition to the rest of PHMSA's transparency efforts, and your Committee may want to request a demonstration of the site to suggest further improvements.

- The Community Technical Assistance Grant program is a clear way to allow local governments and the public to independently obtain information about the safety of the pipelines that run through their communities. This grant program needs to continue and the funding be expanded if possible.

While the initial grants given out focused on the collection and dissemination of pipeline safety information, another allowed use of the grants is to provide for greater public involvement in pipeline safety processes, such as participation in standard setting committees talked about above. Currently the timing of the grant periods is such that it makes it nearly impossible to use these grants in that way, so Congress may need to work with PHMSA to determine a way to allow local government and citizen groups to tap into this money so they can bring that independent voice to such processes for the furtherance of pipeline safety.

- The Pipelines and Informed Planning Alliance Report, which is due out any day, provides the tools, in the form of recommended practices, for local government to take a more active role in providing for the safety of pipelines and those living near them. Local government involvement will help ensure that more independent voices are heard in all pipeline safety debates, and will provide local citizens more accessible information on these important issues from a source they are used to hearing from. Congress can help ensure this local involvement by authorizing and appropriating initial funding to allow PHMSA, or some other organization, to adequately promote these new recommended practices across the country to local governments with pipelines in their jurisdictions. Unfortunately, for most local government pipelines are out of sight and out of mind, so without promotion they will not know there are important safety issues in their control when planning near pipelines, and that there are now recommended practices available to help them undertake this planning.

4. You spoke about the Community Technical Assistance Grants. You mention that ongoing funding for these grants is not clear, so the Trust asks that we ensure the authorization of these grants are continued, and that we consider raising the cap on the amount of an individual grant, removing the limitation on funding sources for the grants, and -most importantly—do whatever is necessary to ensure that the authorized funds are actually appropriated. How is the program funded now? My understanding is that there was some discussion in 2002 - since this was created in the wake of several tragic pipeline ruptures - about funding the program through the user fees that are paid to PHMSA by pipeline operators to maintain the pipeline safety program. In fact, as a result, there is a prohibition against using the user fees to fund the program in the law. Since you were around at the last time, what were those discussions? Why was the prohibition put into law? Are you proposing eliminating that

prohibition, and what should the cap on the individual grants be raised to? Right now they are $50,000 each.

It is our understanding that the Community Technical Assistance Grant program is one of the only PHMSA pipeline safety activities not funded by user fees and, perhaps, the only program explicitly prohibited from receiving user fee-based funds. When Congress developed this grant program in 2002, a year after the September 11 attacks, it was a major step forward for public awareness in the pipeline safety regulatory regime, though compared to the "right to know" provisions contained in other law, it was a generally modest proposal. The provision was included in a bipartisan consensus reauthorization draft developed by the Energy and Commerce Committee, but met with resistance from industry. Ultimately, the pipeline industry viewed user fees as "their money" and complained about using these fees to fund the program. The industry feared that this program would become a launching pad for funding political attacks on companies and the industry as a whole. Clearly, it has not, and, further, we reject outright the idea that the pipeline industry (or any industry) should have a greater say over the way user fees are spent than anyone else, since the point of the fees is for the government to enhance the safety of the public, not just benefit industry. However, at the time, the inclusion of this prohibition on user fees was important to Committee leadership winning the support of some rank and file Members for the overall reauthorization package. These grants certainly enhance safety and, practice has shown that there is absolutely no credible case to be made for funding this through a mechanism that is different than that used to fund any other PHMSA program. In fact, placing the grant program outside the user fee regime raises the budgetary and PAYGO bar, thus making it more difficult for the Appropriations Committees to fund the program –something that, no doubt, some in industry intended. Given all that, we strongly favor removing the restriction on the use of user fees for this grant program.

We also are in favor of raising the lid on individual grant awards from $50,000 to $100,000. The number was drawn from the Superfund Amendments and Reauthorization Act (SARA) which was enacted in 1986 and has fewer restraints on the overall level and use of grant money. Since enactment of the Pipeline Safety Information Grants program in 2002, this cap has proven to work against the effectiveness of the program and an increase to a more realistic and up-to-date figure would enable professionals such as engineers to conduct more thorough examinations of pipeline safety issues.

Written Statement of Robert Kipp,
President of the Common Ground Alliance

Hearing on "Pipeline Safety Public Awareness & Education"

Before the
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Committee on Transportation and Infrastructure
United States House of Representatives

July 19, 2010

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SUMMARY

Background:

The Common Ground Alliance is a nonprofit organization dedicated to shared responsibility in the damage prevention of underground facilities. The Common Ground Alliance was created on September 19, 2000, at the completion of the "Common Ground Study of One-Call Systems and Damage Prevention Best Practices." This landmark study, sponsored by the U.S. Department of Transportation Office of Pipeline Safety, was completed in 1999 by 161 experts from the damage prevention stakeholder community.

The "Common Ground Study" began with a public meeting in Arlington, VA in August 1998. The study was prepared in accordance with, and at the direction and authorization of the Transport Equity Act for the 21st Century signed into law June 9, 1998 that authorized the Department of Transportation to undertake a study of damage prevention practices associated with existing one-call notification systems. Participants in the study represented the following stakeholder groups: oil; gas; telecommunications; railroads; utilities; cable TV; one-call systems and centers; excavation; locators; equipment manufacturers; design engineers; regulators; federal, state, and local government. The Common Ground Study concluded on June 30, 1999 with the publication of the "Common Ground Study of One-Call Systems and Damage Prevention Best Practices."

At the conclusion of the study, the Damage Prevention Path Forward initiative led to the development of the nonprofit organization now recognized as the Common Ground Alliance (CGA). The CGA's first board of directors' meeting was held September 19, 2000. Building on the spirit of shared responsibility resulting from the Common Ground Study, the purpose of the CGA is to ensure public safety, environmental protection, and the integrity of services by promoting effective damage prevention practices.

The CGA now counts more than 1,400 individuals representing 16 stakeholder groups and nearly 200 member organizations. In addition, our 60 Regional Partners total some 2,000 members covering most states and 6 Canadian Provinces.

The CGA's nearly $1.7M in revenue for 2009 was derived from a PHMSA grant of $500,000.00 and membership and sponsorship dues totaling approximately $1.2M. In addition, members contribute approximately 10,000 hours of their time and pay for their expenses. The funding and contribution of time enable the CGA to complete its programs and operate the organization. The CGA has three full time employees and one part time employee. Each of CGA's 16 participating stakeholder groups has one seat on the CGA Board of Directors, regardless of membership representation or financial participation.

CGA members populate the organization's six working committees: the Best Practices Committee, the Technology Committee, the Educational Programs & Marketing Committee, the Data Reporting & Evaluation Committee, the One Call Systems International Education Committee and the Regional Partners Committee.

Committee decisions are made by consensus of all 16 stakeholders. Every best practice, every educational initiative, every decision at the committee level comes with the support of every stakeholder group.

WORKING COMMITTEES

The CGA working committee guidelines include:

- All stakeholders are welcomed and encouraged to participate in the Committees' work efforts.
- Committee members represent the knowledge, concerns and interests of their constituents.
- A "primary" member is identified within each Committee for each particular stakeholder group as the spokesperson for consensus decisions.

The Common Ground Alliance is managed by the association's Board of Directors. Currently, each director on the Board represents one of the 16 CGA stakeholder categories. The Directors are elected by the CGA members within their respective stakeholder group, and represent the stakeholder group at approximately five meetings and to three to six teleconferences per year. Following are the names of the directors and the stakeholder group they represent:

Excavator...Jim Barron, Ronkin Construction
State Regulator...Massoud Tahamtani, Virginia State Corp. Commission
Insurance...John Komidar, Travelers Insurance
Railroad...Bob Fronczak, Association of American Railroads
Oil...Ron McClain, Kinder Morgan
Locators...Jamal Masumi, Utiliquest LLC

Public Works...Mark Macy, City of Nashville
One Call...JD Maniscalco, Utility Notification Center of Colorado
Equipment Mfg...Nate Clark, John Deere
Gas Distribution...Don Kopczynski, Avista Corporation
Gas Transmission...Randy Barnard, Williams
Engineering...Bill Johns, SPEC Services
Road Builder...Vic Weston, Tri-State Road Boring
Electric...Patti Lama, Portland General Electric
Telecomm...Diane McCarthy, Verizon
Emergency Services...Jerry Rosendahl, Minnesota State Fire Marshal)
At Large...Tim Felt, Colonial Pipeline
At Large...Corey Willson, 3M
At Large...Abigail Fulton, BC Construction Association
At Large...Paul Preketes, Retired Past Chair

The following includes an overview of each CGA working committee.

1. **Best Practices Committee**: The purpose of the Best Practices Committee is to promote damage prevention, it is important that all stakeholders implement the CGA's damage prevention Best Practices Version 7.0, as applicable to each stakeholder group. The Best Practices Committee focuses on identifying Best Practices that are appropriate for each stakeholder group, gauging current levels of implementation and use of those Best Practices, and encouraging and promoting increased implementation of the Best Practices.
2. **Technology Committee**: The mission of the Common Ground Alliance Technology Committee is to seek, identify, and communicate technologies and practices that improve the utility damage prevention process.
3. **Educational Programs and Marketing Committee**: The Committee develops and communicates public stakeholder awareness and educational programs. These programs and products focus on the best practices and the theme of damage prevention. The Committee looks at existing damage prevention educational programs to identify opportunities where the CGA can have significant impact in furthering the reach and effectiveness of those programs and the Committee develops new educational messages and strategies.
4. **Data Reporting and Evaluation Committee**: The Data Reporting & Evaluation Committee looks at currently available damage data, the gaps where additional data reporting and evaluation is needed, and how such data for various underground

infrastructure components, can best be gathered and published. Reporting and evaluation of damage data is important to: measure effectiveness of damage prevention groups; develop programs and actions that can effectively address root causes of damages; assess the risks and benefits of different damage prevention practices being implemented by various stakeholders; and assess the need for and benefits of education and training programs.

5. **One Call Systems International Committee**: The purpose of One-Call Systems International (OCSI) is to promote facility damage prevention and infrastructure protection through education, guidance and assistance to one call centers internationally. OCSI was also responsible for coordination of the nationwide rollout of "811".
6. **Regional Partner Committee**: The CGA recognizes that existing regional damage prevention groups have invaluable knowledge and experience, and these groups continue to make great strides in preventing excavation damage to America's infrastructure. The CGA also recognizes that some areas of the country currently have no regional damage prevention programs and work to address these gaps. Through the CGA Regional Partner Program, the CGA partners with existing local, regional, and state damage prevention programs that have an objective of promoting communication among all stakeholders about damage prevention Best Practices.

PIPELINE SAFETY, PUBLIC AWARENESS AND EDUCATION

A. 811 – Nationwide Call Before You Dig Telephone Number

The Educational Programs & Marketing Committee has primary responsibility for "Pipeline Safety Public Awareness & Education". Most of the CGA's activities focus on all underground facilities, though some programs may be specific to one industry. The following summarizes CGA's major activities in Public Awareness and Education.

811: On December 17, 2002, President George W. Bush signed into law the "Pipeline Safety Improvement act of 2002". Included in this Act was the following provision: ***"Within 1 year after the date of the enactment of this Act, the Secretary of Transportation shall, in conjunction with the Federal Communications Commission, facility operators, excavators, and one-call notification system operators, provide for the establishment of a 3-digit***

nationwide toll-free telephone number system to be used by State one-call notification systems."

We congratulate and thank this committee and former congressman Chris John for introducing and sponsoring 3-digit-dialing as a provision to the "Pipeline Safety Improvement Act of 2002." We congratulate the FCC commissioners on their unanimous support of this endeavor.

The process to assign and implement this number "811" was completed in 2007. On May 1, 2007, "811" was put into service across the country. Much of the CGA focus for public awareness has been focused on educating the public and excavators to call 811 before digging. The CGA is unique in that we rely almost completely on our network of members to implement the 811 campaign.

Recent "811" initiatives include the following:

1. National Safe Digging Month: On March 26 (legislative day, March 25), 2010, IN THE SENATE OF THE UNITED STATES Mr. LAUTENBERG (for himself, Mr. THUNE, and Mr. ROCKEFELLER) *Resolved,* That the Senate supports the goals of National Safe Digging Month and encourages homeowners and all excavators throughout the country to call 811 before digging. Additionally, there were 40 State Proclamations supporting April as Safe Digging Month.
2. 3M and Shell NASCAR Events: In November 2009, the 811 logo and tagline were painted on the number "29" Shell race car in Homestead for the closing race of the 2009 NASCAR series. In April of this year, Shell once again painted the logo and tagline on their car for the Talladega race. They were joined by 3M who included the 811 logo and tagline on the #16 car. At no cost to the CGA, these messages generated more than half a million dollars worth of media coverage for the 811 message.
3. Professional Bass Boat: The Kentucky and Indiana one call centers, now known as "Kentucky 811" and "Indiana 811" painted the 811 logo and message on the boat and trailer of a professional bass fisherman fishing the Professional Anglers Association, PAA. This gentleman tours the country and is seen on television spreading the 811 message.

4. August 11 as 8/11 Day in New York City: More than 50 volunteers "worked" the rope lines at the TODAY Show and Early Show wearing 811 tee shirts on 8/11 day (August 11, 2009). One of the volunteers was interviewed, generating a message, which according to media experts would have cost some $50,000.00. CGA will be there again this year.
5. Ringing the closing bell on the New York Stock Exchange in partnership with John Deere: John Deere has arranged to ring the closing bell at the NYSE on August 20. The stage backdrop will showcase the 811 logo and will be aired on most major network's evening news broadcasts. The media equivalency value is substantial.
6. Atmos Energy Promotion: Atmos Energy, CGA Sponsor, incorporated the 811 logo on to all print correspondence which equates to 600 million pieces of literature annually.
7. Partnership with United Rentals: United Rentals has agreed to place decals on excavation equipment at the warehouse whereas it arrives on the rental dock already on the equipment. They will also place "811" decals on the 11,300 trackhoes and backhoes currently in their rental inventory.
8. Electronic Billboards: Member companies have promoted 811 using electronic billboards including during Chicago White Sox and Cincinnati Reds games.
9. Partnerships with Radio Disney: CGA members have worked with Radio Disney to promote 811 at the Pittsburgh Zoo and Chicago Zoo as well as multiple malls in Indiana.
10. 811 Public Service Announcements: The CGA has produced and provided Radio and television Public Service Announcements, PSA's for use by any company who wishes to download and distribute to the radio and television stations in their service area. Chevron funded the production and distribution of a radio PSA tailored to the 19 coastal parishes in Louisiana. This message was aired shortly after the start of the oil leak in the Gulf and asked those thinking of dredging to please call before dredging in the Gulf, to avoid further environmental damage and potential injury. Chevron subsequently paid for an advertising schedule to ensure the message would get airtime.
11. 811 Pirate Video Aimed at Next Generation of Diggers: Williams Pipeline provided funding for the CGA to create, produce and distribute a video for educating 8 to 11 year old children on the dangers of digging and the treasures that lie below the surface. This nearly eight minute video is being distributed throughout the country to various school organizations, public libraries and youth organizations.

12. Media Outreach/Interviews: CGA employees, members and various one call center employees have appeared on nationally syndicated programs such as ABC Radio, The Money Pit, WGN Chicago, as well as numerous local programs. The 811 message also appears throughout multiple internet sites, and the CGA and member organizations have incorporated Social Media into the 811 outreach plan.
13. Integrated Website at www.call811.com: The entire CGA Public Awareness Campaign is available for download by stakeholders at www.call811.com. The site includes state specific information and links to all One Call Centers. The site also includes frequently asked questions, "how 811 works," and opportunities for feedback and questions.
14. Print Campaign: CGA members have included the use of 811 and the "Call before you Dig" message in newsprint, bill stuffers, bumper stickers and door hangers. The logo and tagline can also be found in magazines, such as: Southern Living, Delta Sky Miles, US Airways Magazine and Popular Mechanics. Advertisements and articles have also appeared in a variety of newspapers including: USA Today, New York Times, Washington Post and the Chicago Sun Times.
15. Large Scale Placement of 811: Early in the campaign, Colonial Pipeline painted a 30 foot high "811" logo and the accompanying "Know what's Below, Call before you dig" message on a holding tank along Interstate 85 near Greensboro, NC, a highly travelled highway. Following their lead, Kinder Morgan, Sunoco, P.S.E. & G. of New Jersey, Williams, Shell, and others have all painted the "811" logo and message on highly travelled highways in various states nationwide.
16. Mark-it Madness: Ten one call centers calling themselves Mar-kit Madness have pooled advertising money and contracted Joey Logano, a NASCAR driver, who has recorded radio and television PSA's. Logano's photo also has been incorporated into a large scale print campaign where he appears on various billboards at Texas Motor Speedway, Daytona International Speedway, and Michigan International Speedway. The group focuses on leveraging pooled resources to promote a single consistent campaign.
17. Various Placements: Other placements of the 811 logo and message include banners on roadways, floor decals in Home Depot and fleet decals on various vehicles.CGA estimates that stakeholder support of the 811 campaign provides a value of $10 million in advertising equivalency value annually. Because of the unique marketing mix of traditional and non-

traditional mediums: this is an estimate. There are no proven advertising equivalency values for mediums such as placing the 811 logo on tanks, letterhead, fleet vehicles etc. However, advertising equivalency for advertising buys, NASCAR appearances, etc. have been validated.

B) CGA Best Practices

The CGA Best Practices are quickly becoming the standard on Damage Prevention practices. A number of States have adopted some or all of the CGA practices in their laws or "rules" governing excavation practices. The Best Practices Committee, a diverse 70 plus person committee of damage prevention professionals comprised of all stakeholder groups, is very cognizant of this evolution and give the utmost thought and care to every practice considered.

The CGA prints a new edition of Best Practices every year for general distribution beginning at our annual meeting in March of each year. We make every effort to ensure our distribution is as widespread as possible utilizing as many forms of media as possible.

Compliance & Enforcement:

In August 1999, the 161 experts who developed the original Common Ground Best Practices unanimously agreed that an effective Compliance and Enforcement program at state level was required to reduce the incidences of damage to the infrastructure.

These practices are contained in the Common Ground Alliance's Best Practices Version 7.0 and are as follows:

7-1: Public and Enforcement Education

A. Public Education

Practice Statement: Public education programs are used to promote compliance.

Practice Description: A single entity is charged to promote comprehensive and appropriate programs to educate all stakeholders about the existence and content of the damage prevention laws and regulations. This is not meant to discourage individual stakeholders from providing educational programs.

B. Enforcement Education

Practice Statement: Mandatory education is considered as an alternative or supplement to penalties for offenders of the damage prevention laws and regulations.

Practice Description: Once a violation of the damage prevention laws or regulations has occurred, mandatory education is an effective alternative or supplement to civil penalties. Mandatory education as an enforcement tool promotes compliance with damage prevention laws and regulations.

7-2: Incentives

Practice Statement: Damage prevention programs include incentives to promote compliance with laws and regulations.

Practice Description: Incentives can include, but are not limited to, ease of access to one call center, membership and participation considerations, representation on one call boards, reasonable enforcement of regulations, safety and liability protection, access to alternative dispute resolution (ADR), and public education.

7-3: Penalties

Practice Statement: Compliance programs include penalties for violations of the damage prevention laws or regulations.

Practice Description: Within the context of one call statutes, there exists specific provisions for penalties for failure to comply with the damage prevention laws and regulations. Performance and penalty incentives are equitably administered among stakeholders subject to one call provisions.

A penalty system includes education as an alternative or supplement to civil or other penalties.

7-4: Damage Recovery

Practice Statement: State damage prevention laws and regulations recognize the right to recover damages and costs resulting from noncompliance.

A. Right of Recovery

Practice Description: The statute recognizes an injured party's right to recovery when damages and/or costs are incurred as the direct result of an entity's failure to comply with the one call laws and regulations. For example, Arizona endorses an injured party's right to recover damages when the other party has failed to comply with the one call law.

B. Alternative Dispute Resolution

Practice Description: Avenues for settlement of disputes include alternative dispute resolution. Minnesota endorses ADR through the state court system, New Jersey endorses ADR in construction contract documents, and the federal government endorses ADR through the federal courts.

7-5: Enforcement

A. Authority

Practice Statement: An authority is specified through state statutes and given the resources to enforce the law.

Practice Description: The enforcement authority in each state has the resources to enforce the laws and regulations. Experience has demonstrated that enforcement of the one call laws and regulations that did not identify a specific authority other than the attorney general has not been effective.

Characteristics of such an authority include:

- a process for receiving reports of violations from any stakeholder;
- an operating budget source other than fine revenue, such as a line item in the state budget, excluding fines as a source of income for the authority;
- stakeholder involvement in periodic review and modification of enforcement processes;
- resources to respond to notifications of alleged violations in a timely manner;
- a method of investigating alleged violations prior to issuing a notice of probable violation;
- impartial authority adjudicating violations;
- an initial informal means of contesting a notice of violation; and
- a published violation review process and violation assessment considerations.

B. Structured Review Process

Practices Statement: A structured review process is used to impartially adjudicate alleged violations.

Practice Description: Two types of review processes currently used are outlined below. These type of processes differ in terms of 1) who receives reports of alleged violations, 2) who investigates the reports, 3) possible outcomes of the investigation, 4) who conducts 1st tier (informal) hearings, 5) possible outcomes of 1st tier hearings, and 6) appeal rights following a 2nd tier (formal) hearing. It is important that review processes are constructed to avoid abuses of authority and prevent any individual, industry, stakeholder or agency from exercising undue power or influence over the process.

Type 1: Traditional Enforcement Authority - This system is currently used in Arizona, Connecticut, Massachusetts, Minnesota, New Hampshire, New Jersey, New York and Pennsylvania. Reports of alleged violations are sent to the State Agency. A state investigator investigates the reports. If the investigator decides not to issue a NOPV (Notice of Probable Violation), the matter is concluded. If not, the NOPV is issued, and the investigator conducts an informal hearing or review. If the investigator determines that no violation was committed the matter is concluded. If the investigator determines that a violation was committed, the NOV (Notice of Violation) is issued. If the alleged violator does not contest the NOV, the alleged violation is bound by the facts, findings, orders and penalties set forth in the NOV. If the alleged violator so requests, the State Agency conducts a formal hearing. The alleged violator may appeal the decision reached in the formal hearing to the state court system.

Type 2: Advisory Committee (made up of stakeholders) partnered with State Agency - This system is currently used in Virginia. Reports of alleged violations are sent to the State Enforcement Agency. The State Agency investigates the alleged violations and reports to an advisory committee. The Committee is made up of stakeholders representing the following statutorily mandated fields: excavators, facility owners/operators, notification centers, contract locators, local governments, State Department of Transportation, the Board of Contractors, and the State Enforcement Agency. If the advisory committee decides not to issue a NOPV (Notice of Probable Violation), the matter is concluded, possibly with a "letter of concern" containing one call information. If the advisory committee decides to issue an NOPV, it is issued by the State Agency. If the alleged violator does not request a hearing, the alleged violator is bound by the enforcement action set forth in the NOPV. If the alleged violator so requests, an informal hearing is held by the advisory committee. If the advisory committee decides that no violation was committed, the matter is concluded, subject to the right of the State Agency to contest that decision in an administrative proceeding conducted by the agency. If not, the NOV is issued. If the alleged violator then settles the matter with the advisory committee, the settlement is subject to approval by the State

Agency in an administrative proceeding. If there is no settlement, the State Agency conducts a formal administrative hearing. The alleged violator may appeal the decision reached in the formal hearing to the state court system.

Importance of Effective Compliance/Enforcement:

The practices outlined in CGA's Best Practices still hold true today. The Best Practices have remained the same on this issue since they were first written more than 10 years ago. There are a number of states with effective enforcement programs including Minnesota, Virginia, New Hampshire, Maine, Georgia and others.

The CGA believes that consistent, fair and balanced State Enforcement of one call laws in states where no enforcement exists today, has the greatest potential for helping reduce damages. There are states that enforce their laws without impacting their already tight state expense budgets.

We believe the second most important consideration is the elimination of state exemptions to one call laws. These two issues, if implemented, will help us continue this yearly trend of reduced excavation damages in this country.

C) Damage Information Reporting Tool (DIRT)

The primary purpose in collecting underground facility damage data is to analyze data, learn why events occur, and how actions by industry can prevent them in the future: thereby, ensuring the safety and protection of people and the infrastructure. Data collection allows the CGA to identify root causes and perform trend analysis, and in turn, CGA's stakeholders are better able to focus educational efforts and improve practices and procedures.

The CGA's purpose is to reduce underground facility damage, which threatens public and worker safety, and costs billions of dollars each year. In order to better understand where, how and why these damages are occurring, we request accurate and comprehensive data from all stakeholders.

In August, the CGA will publish its sixth report on damage data. The following is a brief summary of highlights that will be published in this report:

- More than 100,000 reports were voluntarily input into our system for the year 2009, marking the fourth consecutive year of more than 100,000 records being included as part of the analysis;
- It is estimated that total damages to the underground infrastructure (including gas, petroleum, telecommunications, electric, water, etc.), have gone from an estimated 450,000 in 2004 to 170,000 in 2009. This reduction has followed a relatively straight line with no major changes in any one year. With the many variables involved in determining these numbers, it is felt that though the absolute number may vary, there is a great degree of confidence in the downward slope identified over the years. The downward trend in the total estimate of damages is due, in part, to the recession and resulting decrease in overall construction activity. However, we believe that the remarkable 60% reduction in excavation damages from 2004-2009 is also the result of the successes of the "811" implementation and public awareness campaign, widespread implementation of our Best Practices as well as various corporate and government initiatives.
- CGA estimates that the percentage of damages where no call was made to the one call center prior to excavation decreased from approximately 45% in 2004 to approximately 35% in 2009. In terms of damages the difference is immense. It is estimated that no call was made to the one call centers in more than 200,000 damages in 2004, while that number was estimated to be approximately 60,000 in 2009. We believe that the advent of 811 and the Public Awareness programs of CGA stakeholders have had a major impact on this aspect of damage prevention.
- We still have a great deal of work to do. In a separate survey done earlier this year 50% of homeowners planning to work on a back yard project, and who knew to call the one call center did not plan on calling. Consistent and meaningful education and outreach is still needed as we work to change the behavior of homeowners.

CLOSING

The Common Ground Alliance is a true member-driven organization. Members from the 16 stakeholder groups work together to determine direction and problem-solve, making the CGA a truly unique forum. The 300 or so committee members check egos at the door and work together to develop consensus decisions. Their efforts and the financial support of their companies are what make the CGA the success it has become.

Though I have said very little of PHMSA to this point, I can state with great pride and immense gratitude that the CGA would not exist without the financial and logistical support of PHMSA and their great staff led by Cynthia Quarterman, Jeff Wiese, and Steve Fischer. It seems they can never do enough for the CGA. Representatives of PHMSA participate at every committee meeting and provide us with the necessary support to advance the cause of Damage Prevention.

Lastly, thank you to our sponsors. The 43 companies that sponsor the CGA as well as our additional 122 member organizations provide the financial support that CGA needs to sustain and grow our programs. There are many other companies reaping substantial benefits from the efforts of the CGA and our wonderful sponsors and active members. To those companies who are not involved, it's time to get on board. To our sponsors and members – THANK YOU, THANK YOU, THANK YOU.

Thank you for the opportunity to provide you with this testimony.

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CGA
Common Ground Alliance

August 16, 2010

Representative Corrine Brown
Chairwoman
Subcommittee on Railroads, Pipelines,
and Hazardous Materials

Dear Chairwoman Brown:

I have included responses to the additional questions related to my testimony on July 21, 2010 below.

- According to PHMSA, "811" has helped reduce the number of excavation damages caused by failure to locate underground utilities prior to digging from 57% to 2004 to 35% in 2009. Do you have any recommendations to enhance the program to help reduce the number of excavation damage incidents even further?

Response: The CGA Damage Information Reporting Tool estimates that failure to call the One Call Center prior to digging was one of the primary root causes in 48% of the damages in 2004. The CGA estimates that number to be approximately 35% in 2009.
The CGA believes that increased state enforcement of existing one call laws will help reduce excavation damages. Those few professional excavators who do not call before beginning their jobs are more apt to call if they know they are facing fines should they chose to ignore their state laws.

The industry needs to increase promotion of the 811 public awareness campaign. A recent omnibus survey undertaken by the CGA indicates that a majority of homeowners planning to dig or excavate in their yards within the year, do NOT plan on calling the one call center to have the facilities located in the excavation area. Any funding that can be provided to the CGA will help us continue to develop programs that can be used by stakeholders nationwide to assist in building public awareness.

- In your written testimony, you stated that "the Common Ground Alliance (CGA) believes that consistent, fair and balanced State Enforcement of one call laws in states were no enforcement exists today, has the greatest potential for helping reduce damages. There are states that enforce their laws without impacting their already tight state expense budgets." Specifically, where are the areas where no enforcement exists? Do you have any recommendations for Congress or PHMSA to help reduce this gap?

Response: I understand that PHMSA is in the process of compiling information on State Enforcement status. A number of states will only levy fines in very rare instances where serious damage occurs.

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SOUTHWEST GAS CORPORATION
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[illegible] SAFETY ALLIANCE
[illegible]

Without wanting to single out various states, using Louisiana as an example – the state one call law's enforcement authority is under the jurisdiction of the State Police Force. Enforcement of State One Call laws are probably not viewed as a priority by the majority of the officers across Louisiana.

- Your written testimony states that the Common Ground Alliance now counts more than 1,400 individuals representing 16 stakeholder groups and nearly 200 member organizations. In addition, CGA has 60 Regional Partners totaling over 2,000 members covering most states and 6 Canadian Provinces. Who are your members? Do they include members of the public (excluding Federal or State governments) or members of pipeline safety organizations?

Response: We do not have a "public" stakeholder category on our Board of Directors. That said anyone is able to become a member and attend any of the CGA committee meetings and Board meetings. We have, in the past, had a few people from the public attend our meetings and we welcome their attendance. With respect to "pipeline safety organizations," once again, our meetings are open to everyone.

- Your written testimony states that the Common Ground Alliance is managed by the association's Board of Directors. Currently, each director of the Board represents one of 16 CGA stakeholder categories: excavator, state regulator, insurance, railroad, oil locators, public works, one call, equipment manufacturing, gas distribution, gas transmission, engineering, road builder, electric, telecomm, emergency services. Outside of the one representative from the Fire Marshalls, it seems that CGA is missing a major stakeholder group: the public. What about including community associations, public safety organizations, or pipeline safety organizations as a stakeholder group?

Response: In response to a similar request some time ago, the Board confirmed that if any individuals or organization participated in one or more committees, demonstrated their commitment to participate in CGA activities and requested a seat at the board, that request would be given serious consideration.

- During your testimony, you were discussing where exemptions should be allowed and you referred to railroad right-of-ways as one example of where exemptions to 811 calling should be allowed. Although property owners should know what's on their property according to you and you stated "go ahead and dig on your property, you know where it is, you know there is no danger." What safety precautions would you recommend to railroad owners that want to dig in their own right-of-ways and personnel may not be aware that there is a pipeline that has been collocated as part of the right-of-way and they are exempted for calling 811? Should railroads that have pipelines collocated in either parallel or perpendicular be exempted?

Response: I would like to be very clear that the context of that response referred to the railroads and not homeowners. The CGA believes that every homeowner should call 811 prior to digging.

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Insofar as the example I was attempting to relate regarding railroads, you will find below the CGA Best Practice approved by the Board in 2009 describing one call membership, as well as a description of the practice

3-26: One Call Membership11
Statement: Any entity that furnishes or transports products or services to a third party for their use or consumption by means of an underground facility or furnishes or transports products or services for its own internal use by means of an underground facility that occupies or crosses a right-of-way or utility easement is a member of a one call center.

Description:
Underground damage prevention begins with a notice of intent to excavate submitted by an excavator to the appropriate one call center. The process of notification depends on all affected member facility operators being notified of intent to excavate through the regional one call center. Membership in the one call center by underground facility operators ensures that potential conflicts with existing facilities that may be encountered during excavation activities are identified by utilizing a single regional point of contact. Operators of those underground facilities described above that fail to become members of their local one call center risk public safety, damage to their facilities and endanger excavators who may come into contact with these aforementioned underground facilities.

Some examples of an underground facility that would not suggest a requirement to be a one call center member follow: The internal use of owned underground facilities to provide safe operations in controlled rights of ways such as railroad operating corridors that facilitate the transportation of freight or passengers. The internal use of an entity's underground facilities by that entity solely on its own property. (Note: above ground use of one's rights of way or property, such as the transportation of freight or passengers by rail, are not within the purview of the CGA Best Practices)

References: State One Call Laws, 1999 Common Ground Study

Please feel free to contact me with additional questions.

Sincerely,

Robert R. Kipp
President, Common Ground Alliance

1421 Prince Street – Suite 410 – Alexandria, VA – 22314 – 703-836-1709 – www.commongroundalliance.com

Statement of

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on behalf of API and AOPL

at the

Hearing on Pipeline Safety Public Awareness and Education

before the

Subcommittee on Railroads, Pipelines, and Hazardous Materials

July 21, 2010

Statement of
Peter Lidiak of the American Petroleum Institute
on behalf of API and AOPL
at the
Hearing on Pipeline Safety Public Awareness and Education
before the
Subcommittee on Railroads, Pipelines, and Hazardous Materials
July 21, 2010

Introduction:

Good afternoon Madam Chair, Ranking Member Shuster, and members of the Subcommittee. Thank you for inviting me to testify on pipeline public awareness programs. I am Peter Lidiak the Pipeline Director for the American Petroleum Institute. My comments today are being presented on behalf of API—the American Petroleum Institute and AOPL— the Association of Oil Pipe Lines.

AOPL is an incorporated trade association representing 51 liquid pipeline transmission companies. API represents about 400 companies involved in all aspects of the oil and natural gas industry, including exploration, production, pipeline and marine transportation, refining and marketing, and service and supply to these segments. Together, the two organizations represent the operators of 85 percent of total U.S. liquid pipeline mileage in the United States.

Public Awareness Programs

Public awareness programs are not just a regulatory requirement but are important tools used by pipeline operators to communicate key safety information to the people that live and work along the pipeline right-of-way. Informational materials tell the public, excavators, public officials, and first responders, among others, about what they need to know about pipelines, activities that are and are not appropriate around pipelines, and who to call and what to do in case of an emergency. For instance, the public can be one of our members' best assets because they can tell the operators when someone is doing something they should not be doing around a pipeline, like digging without calling 811 or engaging in vandalism.

Pipeline operators have been conducting some type of public awareness or education programs for at least the last twenty years. Over time, operators have developed and shared practices to improve their programs. In 2003, a consensus standard, API Recommended Practice (RP) 1162, provided industry a programmatic framework as well as practices for developing, implementing and measuring public awareness programs. And in May 2005, the Department of Transportation's Office of Pipeline Safety (OPS) incorporated RP 1162 by reference into its regulations, following the requirements of the National Technology Transfer Act, and thereby requiring liquid and natural gas operators to follow these practices. OPS is preparing to review and inspect this new approach to public awareness for the first time to assure regulatory compliance and to determine if it is effective in raising awareness of pipelines in communities and helping the public and other key stakeholders understand how to recognize and respond to a pipeline emergency.

When the first edition of API's Recommended Practice 1162 was being drafted, the goal was to craft a public awareness framework for all operators to use and provide practices that were clear, reasonable and practical so that pipeline safety was enhanced. That meant clarifying what public awareness actually means, determining the techniques and logistics for achieving it, and then measuring for effectiveness. And it meant taking on this task for the hundreds of pipeline operators and many millions of people who live or work along the hundreds of thousands of miles of pipeline that run across our nation.

Many stakeholders were involved in developing our public awareness recommended practice, including industry, members of the public, state regulators and the Office of Pipeline Safety. We gathered input and received feedback on drafts. API is an accredited standards development organization, operating under American National Standards Institute (ANSI) approved standards development procedures and undergoing regular audits of its processes. We publish an annual plan of our upcoming standards activities every year in the Federal Register through the National Institute of Standards and Technology, as well as posting the same information on our website.

Communicating safety awareness about anything to hundreds of thousands of people is extremely hard: Not using a cell phone while driving; wearing a seatbelt; the dangers of exceeding the speed limit. Each and every day people are barraged with messages and information. Sometimes people do not want to take the time to listen. Or don't want to listen since they believe they already know what to do. Or don't have enough interest even though we think they should. Communicating about pipelines in our communities will constantly be a challenge. If one has experienced a pipeline incident in his or her community or if a large transmission pipeline is proposed for construction near one's home, then pipeline safety messages resonate. But, in a world of several hundred television and radio channels, Facebook, Twitter, thousands of messages telling us to do this or buy that, and the demands of our own family members, it is little wonder that pipeline operators struggle to relay their very important safety messages.

Much has been done to enhance public awareness since the first edition of RP 1162 came out in 2003---and much has been learned. We are continually finding new and more effective ways to reach out to key stakeholder audiences to talk about pipeline safety and, at the same time, establish channels for those key stakeholders to talk to us about their pipeline safety concerns. Our pipeline public awareness programs are more effective when we can engage our neighbors, local officials, emergency responders, excavators, and others in two-way communication.

Ten years ago, pipeline safety education was mostly limited to the occasional advertisement in local newspapers near a pipeline system. Today, under RP 1162, operators execute extensive baseline pipeline awareness programs and often enhance those communications with multiple supplemental activities that include first responder pipeline emergency training, excavator Dig Safely meetings, special communications with farmers before they begin spring plowing, direct communications with schools located near pipelines, and more.

As part of our efforts, we will make RP 1162 better as we are now doing with a new edition that we expect to come out later this year. The first edition was a monumental achievement, and all who participated in producing it should be proud. Creating something from nothing is tough. Building something from the ground up is hardest. That first edition was a first cut at a very difficult problem. It was not perfect. Putting it into practice revealed some shortcomings. It was not as clear, practical and straightforward as everyone had hoped. And as we continue to learn more in implementing public awareness programs, further changes may be required.

The proposed revisions in the second edition of RP 1162 are expected to address some of the challenges that operators and the public face in effectively communicating with each other about pipeline safety. Provisions such as aligning the key safety messages and delivery frequency between pipeline sectors, more flexibility on delivery methods and increased guidance will help an operator better determine how to more effectively distribute public awareness materials to the affected public and other key stakeholder groups. One notable change is the elimination of impractical provisions, such as "Measure 3—Desired Behaviors by the Intended Stakeholder Audience" as a gauge of program effectiveness. We certainly agree that public awareness programs should be evaluated for their effectiveness. We believe that "awareness", not "desired behavior", is the right thing to measure, and is much more measurable. While changing behavior is desirable, the focus of the RP and the direction we received from Congress and OPS is to increase pipeline safety *awareness* among the affected public and our other key stakeholders. With all the external factors that may potentially influence a stakeholder, it is impractical for an operator to make a determination that its public awareness program prompted behavior changes by the public through any quantifiable measure. We can, however, reasonably measure, over time, changes in awareness about pipeline safety.

We are also addressing a recommendation from the National Transportation Safety Board (NTSB) to identify 911 Call Centers explicitly as part of the target audience for public awareness programs in the revised edition of API RP 1162. We have communicated this to NTSB and they have marked the status of the recommendation as "Open; Acceptable Response".

As operators have worked their way through the first four year implementation period for their new programs, they have encountered several challenges. Evaluating the effectiveness of their programs was something that most operators had never done before and this was perhaps the biggest challenge. How many people actually read and understand these messages and retain the information? Are people becoming more aware about damage prevention and emergency response?

API, AOPL and the Interstate Natural Gas Association of America sponsored a program effectiveness survey tool (PAPERS) that is available to operators for the evaluation of their programs. It gives operators the ability to look at many different locations and methods of their programs. This evaluation tool allows operators the ability to modify their programs based upon their individual results and each participating operator can compare its results to aggregate results, which makes them more meaningful.

Triggers for supplemental programs are another industry challenge. The regulations properly give discretion to operators to design programs to achieve the desired public outreach and awareness goals and decide whether and what supplemental elements should be added to their basic programs. Flexibility and discretion are critical because one-size-fits-all solutions don't make sense with such a diverse industry operating in so many different environments.

Excavation Damage Prevention

Another key element of our public education programs is excavation damage prevention. We want excavators to mark where they plan to dig, call their One-Call Center 48-hours before digging and communicate with underground facility owners that may be impacted. We want to be notified if unauthorized excavation is happening near our pipelines. While excavation-related accidents are not frequent for hazardous liquid pipelines, at about 7 percent of all accidents over the past 10 years, they make up around 30 percent of the accidents that resulted in serious outcomes like fires, explosions, evacuations, injuries and deaths. That's why the industry has strongly funded and participated in the Common Ground Alliance since its inception to promote best practices in excavation and marking around underground facilities and why we supported the rollout of the national 811 Call Before You Dig Campaign. We also support strong state damage prevention laws and call for states to eliminate exemptions from those laws for local government and commercial excavators. This would remove a significant safety gap, because excavation damage is a problem regardless of who the excavator is. OPS began a rulemaking last year that will encourage stronger state programs and allow federal enforcement of damage prevention requirements if a state program is found to be inadequate. We call for OPS to complete that rulemaking expeditiously.

Conclusion

Public awareness programs will need to continually evolve to meet the challenges of communicating with the public, excavators and officials; however our objective should remain the same – preventing damage and promoting safety awareness.

Revisions to the statute regarding public awareness programs are unnecessary. Rather we see the need to allow operators the flexibility to build and innovatively shape their current programs to meet our mutual goal of promoting safety awareness.

In order to provide maximum protection to the public from excavation damage, we strongly urge that all exemptions from state one-call requirements be eliminated.

We strongly encourage OPS, under the current public awareness statute, to adopt the upcoming revisions to API RP 1162 into its regulations as a needed update to the pipeline public awareness requirements.

energy API

Peter T. Lidiak
Director

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August 19, 2010

The Honorable Corrine Brown
Chairwoman
Subcommittee on Railroads, Pipelines,
and Hazardous Materials
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Brown,

Attached are my responses to your questions for the record as follow-up to the July 21, 2010 hearing on "Pipeline Safety: Public Awareness and Education".

I look forward to continuing to work with you, the other members of the subcommittee, and subcommittee staff on the reauthorization of the Department of Transportation's Pipeline Safety Program.

Please contact me if you have any questions about my responses.

Sincerely,

Peter T. Lidiak

Responses to Witness Questions for the Record
From Peter Lidiak, Pipeline Director
of the American Petroleum Institute
Hearing on
"Pipeline Safety: Public Awareness and Education"
July 21, 2010

Questions from Chairwoman Brown:

- The Pipeline and Hazardous Materials Safety Administration (PHMSA) has incorporated by reference (in full or in part) 69 separate industry standards into the Pipeline Safety Regulations and 151 Separate industry standards into the Hazardous Materials Safety Regulations. For example, PHMSA's Final Rule required under Public Law 107-355, PHMSA stated that all pipeline operators would have to follow the guidance provided in the American Petroleum Institute's (API) Recommended Practice 1162 (API RP 1162), *Public Awareness Programs for Pipeline Operators*. What was the process that API used to develop this recommended practice? Is this the process typical of how API develops all of its recommended practices? Please be specific. Who participated on the "multi-industry taskforce" with respect to API RP 1162? Is this representative of most "multi-industry taskforce" that API utilizes for developing recommended practices? Who voted on API RP 1162?

The American Petroleum Institute (API) publishes information about its planned standards activities every year in the Federal Register, through the National Institute for Standards and Technology, and posts that same information to our web site. Our processes are regularly audited by the American National Standards Institute (ANSI) for compliance with its requirements for standards development organizations.

When seating a task force to develop a RP, we seek individuals with expertise in the topic(s) to be addressed. The experts on the task force seek sources of information on the issues to be addressed in the document, often drawing from published papers, discussions with parties potentially impacted by the document and existing practices. The task force then drafts the document using their sources and expertise. We seek comment on our pipeline standards documents during ballot review from The Pipeline and Hazardous Materials Safety Administration (PHMSA), The National Transportation Safety Board (NTSB), other trade associations that have pipeline members like the Interstate Natural Gas Association of America (INGAA) and the American Gas Association (AGA), and others determined to be potentially impacted by the document. The task force will examine comments received to determine if they are within the scope of the document, are substantive, and technically sound. All such comments must be addressed. The final draft document is forwarded, usually for a six week review, to a committee of subject matter experts in the general area of interest. Members of that committee vote to approve or disapprove the document. If approved, it is published. If disapproved, it is returned to the task force for additional revision.

The process for producing Recommended Practice (RP) 1162 was similar to the process normally followed by API for developing consensus standards, although there was some additional outreach prior to balloting. Because the RP was intended to be applicable to hazardous liquids and natural gas transmission and distribution pipeline operators, the task force included communications, public affairs, and regulatory compliance experts from hazardous liquids pipeline personnel, natural gas pipeline transmission and distribution pipeline personnel and, because it was anticipated that it would provide a needed framework for operator public awareness programs and might become incorporated into regulations, Office of Pipeline Safety (OPS) employees and representatives of the National Association of Pipeline Safety Representatives (NAPSR) were also included on the task force as observers. It was and is our opinion that these pipeline safety officials adequately represent the interests of the public in the development process; however, we did reach out to the Pipeline Safety Trust in the pre-ballot review of the draft RP for its comments. Furthermore, a *Project Initiation Notification* was sent to ANSI and was published in its weekly Standards Action Report that this project was starting and any affected party was invited to participate. We do not have a list of the task force and observers as that information has been disposed of in accordance with API's records retention policy. However, a list of work group members and government agency observers is available on the PHMSA web site in the documents from the September 2003 public workshops at:

http://primis.phmsa.dot.gov/comm/PublicAwarenessWorkshops.htm.

As RP 1162 neared completion it was circulated widely to industry, state officials, the National Transportation Safety Board (NTSB), OPS, and the Pipeline Safety Trust and, through the Trust, to its constituents. A draft version was posted on API's web site for comment. In September 2003, OPS along with NAPSR and pipeline industry trade associations co-sponsored two public workshops introducing API RP 1162. These workshops were noticed in the *Federal Register*, open to the public, and were webcast via the OPS website. Also, OPS, with API's permission, posted many summary tables of the document on its web site. This process allowed for a greater degree of public review and input than is normal because the RP was of wider interest and could potentially impact a broader audience than most of our consensus standards. When the RP was finalized and published in December of 2003, API also posted a read-only, non-printable version of the published document on its web site for some time following publication along with information about comments received and how they were dealt with in the final version. While that link was inadvertently broken for an unknown amount of time due to administrative changes being performed on the API website, it has been reestablished.

The API Operations Technical Group was and is the body responsible for reviewing and approving pipeline-related standards through the API ballot process. Members of that committee are senior engineering, technical and operations managers of hazardous liquids pipeline companies, and individuals with pipeline engineering expertise.

- Would API have objections to allowing public access (free of charge) to any of its "recommended practices" if adopted by DOT as a regulation? If so, what are API's concerns with making API RP 1162 available to the public free of charge, in light of the fact it is now part of federal regulations that pipeline operators are required to comply with by law?

  Under current policy, API does not normally provide printed and bound or fully accessible electronic versions of our standards free of charge. API's standards are copyrighted and sold worldwide in support of the oil and natural gas industry. They represent a significant investment of industry-wide expertise and are valuable intellectual property. As I stated in response to questions at the hearing, most standards organizations, including API, charge fees for copies of their standards documents. These fees cover the cost of any required data collection, optional research, administration of, publishing and maintaining the standards. API currently maintains more than 500 consensus standards applicable across the oil and natural gas industry. API is considering how its standards that are relevant to public safety and that may be incorporated into DOT regulations might be made available for public review while protecting the integrity and viability of our standards program. When a decision has been reached, we would be happy to meet with you to discuss this issue. We expect that this will also be an issue for other standards development organizations to consider and would impact other segments of the oil and natural gas industry beyond pipelines.

- In your testimony, you noted that API is issuing a revised API RP 1162 which would eliminate measure 3, categorized as Desired Behavior by the Intended Stakeholder Audience in favor of "Awareness" of the affected public. Is this a lowering of the standards and goals of the program? Please discuss this revision. Does the revised version of a standard have to go through rulemaking again since it is referenced in a PHMSA regulation?

  Removing Measure 3, Desired Behaviors by the Intended Stakeholder Audience in favor of measuring "Awareness" does not weaken the standard nor does it diminish the goals of the program. It has not been possible to develop accurate metrics to measure behavior changes associated with public awareness programs because of the myriad externalities that influence public behavior. As an example, it has been suggested that the number of public calls to one-call is a measure of the effectiveness of public awareness program materials. However, a program might be highly effective despite a downturn in the economy that reduced excavation projects, and as a result, the number of calls. By comparison, it is possible to determine if people have seen and read materials provided by operators and whether their knowledge about pipelines has improved through before-and-after polling.

While measuring behavior in any systematic way is not possible, the draft revised standard does encourage operators to evaluate anecdotal information about behavior that may come to their attention. Such information used in combination with other information and experiences may help operators improve their public awareness programs. In other words, public behavior could still be a factor in improving program performance, but it would not be a specified measure of performance.

If the revised RP, once published, were to be referenced in the regulations, PHMSA would have to undertake a new rulemaking to do so since the first edition is explicitly referenced in the current regulations.

- Following a 2007 pipeline incident near Carmichael, Mississippi, the NTSB made a Safety Recommendation to the American Petroleum Institute to revise API RP 1162 to explicitly identify 911 emergency call centers as emergency response agencies to be included in outreach programs under a pipeline operator's public education program. Since API RP 1162 has been referenced in the Pipeline Regulations as a requirement, what has it taken so long to implement the NTSB's recommendation if it enhances safety? Does API believe these actions have been timely even though they have an impact on public safety?

The Carmichael, MS accident occurred on November 1, 2007 and NTSB's recommendations were issued on October 27, 2009. Upon receipt of the recommendation letter to API's President and CEO, Jack Gerard, the recommendation was forwarded to the workgroup chair to be addressed in the revision to API RP 1162. In a November 18, 2009 letter, Mr. Gerard relayed that action to NTSB Chairman Hersman and stated that we planned to have the revised RP published by mid-2010. Ms. Hersman responded in her letter of April 16, 2010 that NTSB classified API's response to the recommendation as "Open-Acceptable Response". As a result, 911 emergency response centers have been explicitly identified in the examples of target stakeholders in the current draft revision of the RP. The revised edition is currently being balloted, and we expect it to be published shortly after the close of the ballot period in September 2010. We consider that to be a reasonable and timely response to NTSB's recommendation. As I stated in my response to questions at the hearing, we take NTSB recommendations very seriously at API.

- In your testimony, you noted that "it is impossible for an operator to make a determination that its public awareness program prompted behavior changes by the public through any quantifiable measure." This appears to be in direct conflict with PHMSA Statistics and the statement made by the Common Ground Alliance. Why isn't the reduction of incidents a quantifiable measure? If the reduction of incidents is truly not a quantifiable measure for the success of a public awareness program does that mean that the program does not have an impact with the targeted audience and should be terminated?

The reduction of incidents is indeed quantifiable. As you know, there has been a significant decline in pipeline incidents over the past ten years, beginning prior to the implementation of the latest public awareness requirements. However, it is an indicator of the success of a host of programs, only one of which might be operator public awareness programs. And it reflects more than just public behavioral changes. It encompasses improved technology, employment of better practices, and more. As discussed earlier, public behavior is not a good measure for public awareness programs because of such externalities. It is an indicator that everything being done is having an effect.

Statement
# of the
National Association of State Fire Marshals

House Committee on Transportation and Infrastructure's
Subcommittee on Railroads, Pipelines and Hazardous
Materials

Chairwoman Corrine Brown and Ranking Member Bill Shuster
Hearing on:
"Pipeline Safety Public Awareness and Education"

Presented by
Peter O'Rourke, Director of Energy Programs
July 21, 2010

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Chairwoman Brown and Ranking Member Shuster, thank you for allowing the National Association of State Fire Marshals to testify today before your Subcommittee. My name is Peter O'Rourke. I serve as the Director of Energy Programs for the National Association of State Fire Marshals and have worked with the Association for the past 15 years.

The National Association of State Fire Marshals represents the most senior fire officials in each State. Our membership is unique in that many State Fire Marshals are sworn law enforcement personnel, giving our organization a blended fire and law enforcement perspective. Most of our State Fire Marshals, however, began their careers in the fire house, working their way up the ranks, eventually achieving the highest state-level fire service position. Among the many duties of a state fire marshal, one of the most important is fire prevention. As such, incident prevention is a central focus in all our programs, including pipeline safety.

The National Association of State Fire Marshals has been actively involved in pipeline education and safety since 2002, when we entered into a Partnership for Excellence in Pipeline Safety with the US Department of Transportation's (DOT) now-Pipeline and Hazardous Materials Safety Administration. The State Fire Marshals' Partnership with US DOT also focused on liquefied natural gas (or LNG) safety, pipeline High Consequence Areas, and hazardous materials safety. But the foundation of the Partnership is a training program called *Pipeline Emergencies.*

The *Pipeline Emergencies* program offers a comprehensive training curriculum that covers liquid and gas, transmission and distribution pipelines from both operations and emergency response perspectives. It was developed in cooperation with subject matter experts in emergency response, pipeline operations, underground safety (like the Common Ground Alliance), citizen safety and fire training. We brought all the players together in order to addresses the multitude of concerns about pipeline safety – but at its core, the program remains an emergency response training curriculum.

The unambiguous priority for State Fire Marshals is to ensure that all fire fighters, in particular volunteers, receive comprehensive fire prevention and suppression training. Through this important training, fire fighters will respond safely and appropriately to accidents and incidents. A recent pipeline accident just this month, in McDuffie County, Georgia offers a real-life example. On July 5th, a propane pipeline was ruptured, killing one person and injuring others. Having never responded to an actual pipeline incident, but having trained regularly, the fire department knew what to do and how to respond. According to Fire Chief Bruce Tanner: pipeline safety training "was a tremendous help… [the incident] was a tragedy as it is, but it could have been a lot worse".

The *Pipeline Emergencies* training program was developed in 2004, and we have shipped almost 45,000 training packages to both public safety agencies and the pipeline industry. The U.S. Department of Transportation has paid the cost of shipping *Pipeline Emergencies* to public safety officials, and there is no purchase fee for any public safety organization that requests copies of the curriculum. In addition, we have trained more than 1,000 certified fire instructors in all 50 states.

The timing of today's hearing is opportune. One of the limitations of our current *Pipeline Emergencies* training program has been that it is available only in hard copy and disseminated through a broad network of emergency response organizations. This has helped to ensure that the public safety community is saturated with the training program, but it has limited our ability to measure and tailor the program to meet individual needs.

Several months ago, however, the State Fire Marshals and US DOT agreed to update the training curriculum and, most important, make it available in an electronic format. We currently are reviewing the program scope and exploring funding opportunities for the comprehensive online Pipeline Safety Portal.

Fortunately, we are not facing any limitations related to technological capabilities. Well established platforms exist to deliver education programs electronically. These platforms are fully capable of measuring data relative to program reach, test results, geographic penetration and other important data points. Some of these platforms allow for integrated and multi-modal notification capabilities. With these capabilities, the State Fire Marshals and the pipeline industry could engage in measurable communications with public safety and other public officials regarding safety training, pipeline maintenance, high consequence area updates, and myriad other public awareness subjects. In addition to the "best in class" pipeline emergency training program, the Portal would include a measurable ability to enhance public awareness and notification efforts.

Most fire fighters receive training through their state and municipal fire academies, which are increasingly utilizing electronic media to deliver training. The State Fire Marshals are working closely with these academies to ensure that the method we select for an electronic pipeline training portal will fit well within their expanding capabilities. This is important because training emergency responders today requires flexibility of delivery in order to fit busy schedules, to be a training priority and to provide training to every emergency responder at no cost. Many fire fighters, particularly volunteers and those in rural areas are not able to travel regularly or even occasionally to fire academies. Instead, these fire fighters often rely on a limited number of trainers in a particular region. A flexible, web-based training and communications portal would reach many first responders, including fire, law enforcement and EMTs, and provide them with a level of training and information they do not regularly receive about specialized emergency risks such as pipelines. For those emergency responders without regular access to the Internet, the State Fire Marshals will offer the training program via CD, or it can be provided through print-on-demand capabilities.

We currently are reviewing the feasibility of this Portal approach. Sustained funding for a curriculum of this type is always a concern, as training cannot be switched on and off depending on availability of resources. It is imperative to continue the progress that the National Association of State Fire Marshals and DOT has made through the Pipeline Emergencies training program so that the country is prepared for future emergencies. In order to adequately maintain the public safety, the training necessary for new emergency responders entering the industry and to update the training curricula for new procedures and hazardous materials, we respectfully request that your Subcommittee authorize funding for Pipeline Emergencies training for a multi-year period.

The National Association of State Fire Marshals remains committed to providing pipeline safety training and awareness to the nation's emergency responders. Hearings like this are essential to sharpening the country's focus on these so often preventable accidents. Public awareness and education, as well as emergency responder training, are vital components of a pipeline safety program. Our association and our membership stand ready to provide greater assistance to this Subcommittee, the Executive Branch, and our state and local partners. Again, I thank you personally and on behalf of the National Association of State Fire Marshals for this opportunity and am pleased to answer any questions.

WITNESS QUESTIONS FOR THE RECORD
FROM CHAIRWOMAN BROWN
HEARING ON
"PIPELINE SAFETY: PUBLIC AWARENESS AND EDUCATION"
JULY 21, 2010

MR. PETER O'ROURKE, DIRECTOR OF ENERGY PROGRAMS, NATIONAL ASSOCIATION OF STATE FIRE MARSHALS

- The *Federal* regulations for pipeline operators' public awareness programs are tied to an American Petroleum Institute Recommendation (API 1162) that is not publically available unless it is purchased. Can you please explain how communities are impacted by the fact that this information is only accessible to the public at a cost? How would safety be enhanced if this information was publicly available?

- Can you please explain the important safety implications of effective public education and awareness programs from the perspective of emergency responders?

- The NTSB has recently raised some concerns about PHMSA's oversight of owner/operator public awareness and education programs. Do you share these concerns?

- For a very long time, firefighters found out where buried pipeline infrastructure was only after a catastrophic event or fire. Have the new pipeline safety regulations done a better job to make emergency responders aware of the buried pipeline infrastructure in their communities?

- Can you please provide the Committee an overview of what training needs there are for emergency responders to ensure they are prepared for a catastrophic incident involving liquid or gas pipelines?

Pipeline Safety: Public Awareness and Education Hearing
Answers to Follow-up Committee Questions
From the
National Association of State Fire Marshals

Response to Question 1

The National Association of State Fire Marshals (NASFM) does not have any responsibility or direct relationship with API RP 1162 and it's availability to the general public. As I'm sure the Committee is aware API RP 1162, in general, is in place to guide the pipeline industry and among other things lays out the guidance for their interaction with emergency responders. We were not aware until recently that there is a fee to access API RP 1162 but do not feel having it readily available to the general public free of charge would realistically enhance the safety of emergency responders. However, we are not opposed to easy and open access to information such as API RP 1162 if it enhances community awareness and communications with the goal of enhancing the safety of the public.

The practices contained in this document are intended to guide industry activities to enhance safety, public awareness and communications with emergency responders and other public officials and if followed they do enhance safety and are an important component of a safety program. Just having the requirement in place is not enough; what we need to ensure is awareness and communication with emergency responders is meaningful and informative and that the training provided is comprehensive and delivered in a manner that ensure emergency responder safety when an incident occurs.

Response to Question 2

Effective public education is the cornerstone of enhancing safety of the public and emergency responders alike. An effective public education program raises awareness of the potential hazards, it prepares the responders for how they should act and respond in an emergency, it can educate on what their actions should be and how to minimize risk of injury and death and damage to property.

An emergency responder is called to respond when something has gone wrong; they put their life and well-being on the line to help someone else. An effective public education program can lessen the risks if people are educated on how to recognize the risk, how to behave accordingly, what actions to take or not take, how to minimize the risk, and what to do when something does happen. From an emergency responder perspective if we can educate the public so they understand the risk and how to minimize or avoid them then ultimately fewer people are injured and less property is damaged. If an emergent event never occurs because someone was aware enough to know how to behave then the emergency responder will never be called into action and the risk to them never materializes. Effective public education enhances the safety of everyone from the general public to the emergency responder.

The National Association of State Fire Marshals primary focus is prevention. Whether it's preventing fires, pipeline accidents, hazardous materials spills or any other hazard, if the initial event never occurs then obviously the risk of injury to the responders never does as well. The only way to gain safe behavior is through public education; education that highlights the risks and teaches safe behavior.

Response to Question 3

NASFM shares the committee's concerns about the effectiveness of some of pipeline operator's public education and awareness efforts but do not place the burden for mandating a quality program solely on PHMSA. Realistically, we believe an effective public education and awareness program is the responsibility and obligation of the operator to ensure they are reaching those that could be impacted in some negative way given the presence of the pipeline. All operators provide some level of awareness and education to the best of our knowledge but the quality of these efforts is where our greatest concerns present themselves. Some operators provide top-notch educational efforts and do a great job of communicating with the public and emergency responders. Others, unfortunately, do just enough to check the box that they did it; we all know this is not enough especially when considering the safety impacts to the public and responders. This type of behavior is difficult at best to control with government action; it's really about the integrity and intentions of the operator. We only need to look at recent events to know some companies are responsible, and do more than is required, and others do the minimum and hope they never get caught or have an incident.

To address our concern with current efforts and results, NASFM suggests PHMSA mandate a specific, already existing, training program for emergency responders entitled *Pipeline Emergencies*. PHMSA has funded and been part of developing this "best in class" program which is currently being enhanced to allow for electronic data collection that could provide greater oversight and while emergency responder preparedness and communication. Many of the educational programs operators (sometimes via third party vendors) deliver short clips of *Pipeline Emergencies* but bits and pieces don't provide the full education and awareness needed. Along with ensuring quality training PHMSA should require data collection through an electronic portal that captures information verifying the student proceeded through the *Pipeline Emergencies* lessons, passed the exams and completed the scenarios. This level of training provides a responder with enough awareness and knowledge to keep themselves and the public safe should a pipeline incident occur.

Our response to your question isn't about a lack of PHMSA oversight but about using more of the tools available and employing 2010 technology to ensure notification, education, data collection, and public awareness notices. If tools to gain this type of information were required of every operator the data would be readily available to see who is complying and who is falling short. A consistent approach to public awareness and emergency responder training eliminates loopholes which PHMSA will never be able to identify consistently with a disjointed, operator specific, approach. It is an unfortunate truth that we only find out awareness and education were inadequate after an incident has occurred. It's too late then!

Response to Question 4

There is a pipeline mapping system that is in place and to some degree fire departments have access to this map. Knowing the location of the underground pipeline infrastructure is important to an emergency responder but that needs to be balanced with security concerns. Just knowing where the pipeline is doesn't really mean much to the emergency responder; they don't need to know where they are unless there is interaction with the pipeline for some reason. Having said that, emergency responders need to know in general of the presence of pipelines in their communities and be particularly aware of High Consequence Areas (HCA's) to help ensure public safety. Should an incident occur in an area with a high concentration of people and where pipelines are present there is a potential of large loss of life and significant injuries.

It is unclear if the new regulations have increased awareness of emergency responders to the location of existing pipelines, however NASFM is not sure it's relevant that they know this. What is important for emergency responders to know is how to respond and react when a pipeline incident occurs to keep themselves and the public safe. In general, given our Association's activities in recent years, awareness by emergency responders has increased. However, unless every responder is aware and trained and it is possible to verify this interaction with real data there's no way to gain full awareness. As stated earlier a program needs to be in place, and apply to every pipeline and operator, that sets forth the awareness and training provided with real data to support it. Emergency responder safety, just as it is with the public's safety, will only increase in a meaningful way when they are aware of the risks and given training to minimize or mitigate those risks. The *Pipeline Emergencies* program is in place to do just that for emergency responders but needs implemented without exception on a national scale.

Response to Question 5

The training needs of emergency responders generally fall into the following areas:

- Overview and understanding of pipelines in general and pertinent regulations
- Pipeline operations (gas and liquid)
- Pipeline emergency response operations
- Tactical response guidelines for pipeline emergencies

A complete curriculum is already developed and available to train emergency responders in these areas and is available to them free of charge through the National Association of State Fire Marshals. This comprehensive training tool helps ensure emergency responders have an understanding of pipeline operations, relevant regulatory information and actual knowledge of how a pipeline is operated as a basis for their further training which focuses on a safe and appropriate emergency response to an incident as well as tactical and operational considerations to safely mitigate the incident.

It has been shown many times that firefighters are hands-on learners and learn best when there is a practical application of the material -- not just a lecture or reading. The program described above, *Pipeline Emergencies,* includes 10 scenarios where an emergency responder can actually apply what they learned to a myriad of pipeline emergency situations. This approach does not take the place of actual, hands-on experience but such experience is difficult at best to provide emergency responders across the nation given the equipment-intensive training props and delivery system necessary. To further prepare emergency responders, NASFM trainers encourage them to interact with industry in their jurisdiction to see the equipment first hand to gain a better understanding of how it works. This also develops relationships and partnerships between the parties so the first time they meet and work together it is not at an actual incident.

Training of emergency responders in regards to pipeline emergencies is important and requires a logical approach while also being an efficient use of their training time. Because emergency responders have many mandated training areas, as well as training in areas where the frequency of an actual emergency is greatest, we must recognize their commitment to overall training. In fact, they are called on by their communities to respond to many types of emergencies in addition to a pipeline emergency. Fortunately, the training needs of responders can be met with the current curriculum. What is needed is the ongoing support to deliver the program to every emergency responder who has a gas or liquid pipelines in their jurisdiction. There is no need to create something different or new as the current training curriculum is recognized by regulators, industry, fire instructors and emergency responders as the very best. *Pipeline Emergencies* just needs to be fully implemented.

UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

Hearing on
Pipeline Safety Public Education and Awareness

Before the
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Committee on Transportation and Infrastructure
U.S. House of Representatives

Written Statement of Cynthia L. Quarterman
Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department Of Transportation

Expected Delivery 10:00 a.m.
July 21, 2010

WRITTEN STATEMENT OF CYNTHIA L. QUARTERMAN
ADMINISTRATOR
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
UNITED STATES HOUSE OF REPRESENTATIVES

JULY 21, 2010

Chairwoman Brown, Ranking Member Schuster, members of the Subcommittee, thank you for the opportunity to appear here today. Secretary LaHood, the employees of the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the entire Department of Transportation share public safety as their top priority. The Department is committed to preventing spills on all pipelines through regulation, oversight, enforcement, public awareness and education. Public awareness, education, and damage prevention initiatives aim to increase the public's knowledge of the pipelines where they live and work.

PHMSA works with a broad stakeholder community to shape our public awareness, education, and damage prevention initiatives. PHMSA stakeholders include federal, state and local agencies; public advocacy groups; damage prevention organizations; research and development organizations; and first responders. Engaging stakeholders early and making them a part of pipeline safety policy development provides them with a sense of ownership in making their communities safer and strengthens the implementation, evaluation, and enforcement of pipeline safety programs. This shared responsibility is a driving force behind the success of most of PHMSA's public awareness and damage prevention focused initiatives.

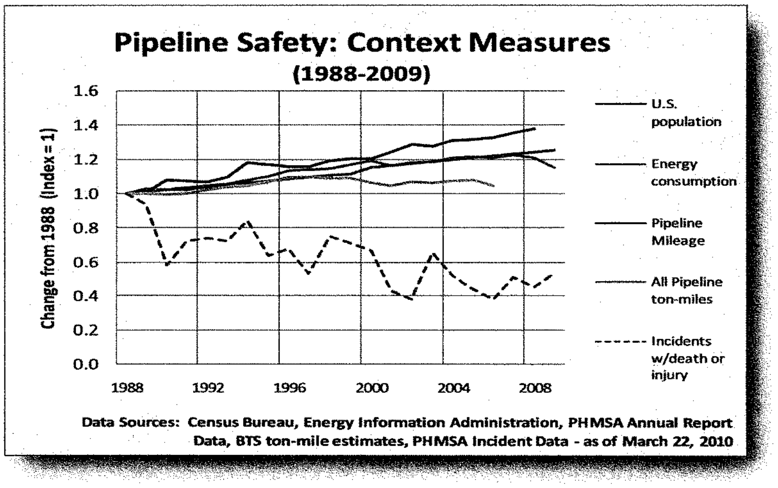
Public awareness, education, and damage prevention are interconnected initiatives aimed at increasing the understanding and knowledge of people who work and live near pipeline rights-of-way. Public awareness covers the pipeline operator requirements to inform citizens living along their pipeline rights of way, as well as local government officials and first responders.

Public awareness is also a component of many of PHMSA's non-regulatory programs. For example, many of PHMSA's damage prevention initiatives make specific stakeholders aware of the role they play in keeping themselves and the pipelines safe. Other examples of these non-regulatory initiatives that improve pipeline awareness and understanding is PHMSA's work with the Common Ground Alliance (CGA), in support of the national 811 "Call Before You Dig" program; support of the development of *Pipeline Emergencies 101* training material to educate first responders on pipelines and how to safely respond to a pipeline emergency; and support of the Pipelines and Informed Planning Alliance (PIPA), which is devising recommended practices to address among many things, land use planning adjacent to pipeline rights-of-way. PHMSA also has dedicated Community Assistance and Technical Services (CATS) representatives, who work with a variety of stakeholders, including the Federal Energy Regulatory Commission, the CGA, states, local government and citizens to keep them informed on matters of particular interest to pipeline safety.

These are only a few of PHMSA's programs focused on public awareness of pipeline issues. Today's testimony will further elaborate on these and other initiatives, some completed, others on-going that support public education, awareness and damage prevention. All of these programs are meant to reduce the likelihood of a pipeline incident and mitigate the risks to the public and the environment in the event of such an incident.

I. IMPROVING SAFETY THROUGH PUBLIC EDUCATION, AWARENESS, AND DAMAGE PREVENTION.

PHMSA has made significant progress in reducing the number of serious pipeline incidents – those involving death or injury, have declined by 50% over the last twenty years. Yet, over the same period, all the traditional measures of risk exposure have risen – population, energy consumption, and pipeline ton-miles. As indicated in Figure 1 below, PHMSA aims to continue the downward long-term trend in pipeline incidents through public education, awareness, and damage prevention.



Data Sources: Census Bureau, Energy Information Administration, PHMSA Annual Report Data, BTS ton-mile estimates, PHMSA Incident Data - as of March 22, 2010

Figure 1: Comparison shows a decrease in deaths and injuries related to pipeline incidents while U.S. population, energy consumption, and pipeline mileage increased over the past 20 years.

A. PHMSA SUPPORTS DAMAGE PREVENTION INITIATIVES THAT SEEK TO ELIMINATE THE LEADING CAUSE OF A PIPELINE FAILURE.

The vast majority of America's pipeline network is underground, making pipelines vulnerable to "dig-ins" by third-party excavators. While excavation damage is 100% preventable, it remains a leading cause of pipeline incidents involving fatalities and injuries. PHMSA's goal is to reduce excavation damage significantly through strong outreach and public awareness programs. As evidenced in Figure 2 below, PHMSA has already been successful in reducing excavation damage incidents as a result of these efforts.

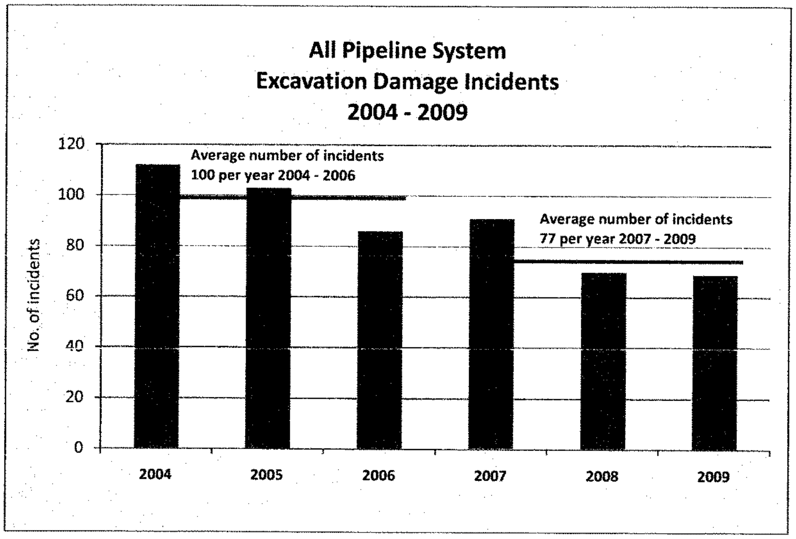


Figure 2: PHMSA is seeing a decline in excavation related damages on all pipeline systems.

PHMSA is proud of its continued and steady leadership in supporting national and state damage prevention and public awareness programs. PHMSA promotes public education awareness with national programs such as the "811- Call Before You Dig" program through the CGA. PHMSA provided over $2.2 million in funding assistance for CGA's 811 educational outreach campaign since 2002. In March 2010, PHMSA participated in the CGA's annual meeting highlighting the importance of the National "811- Call Before You Dig" program. Also this year, the U.S. Senate, House of Representatives, and Transportation Secretary Ray LaHood all promoted the importance of "calling before-you-dig" by designating April as National Safe Digging Month, with the Congress introducing individual resolutions. At PHMSA's urging, forty states, including those represented by members of this Subcommittee, also followed suit with Statewide Safe Digging Month Proclamations. The efforts driven and supported by PHMSA involved the CGA, many states, and damage prevention stakeholders from around the country who are advocates for safe excavation practices.

B. PHMSA ENCOURAGES STATES TO SPREAD THE DAMAGE PREVENTION MESSAGE.

PHMSA recognizes that protecting communities, the environment and the pipeline infrastructure through public education and awareness is a shared responsibility among all stakeholders. PHMSA has developed grant programs through its One Call Grant program and State Damage Prevention (SDP) grants. PHSMA has awarded SDP grants to fund improvements in damage prevention programs. SDP grants reinforce the nine specific elements that make up the components of an effective damage prevention program:

1. Enhances communications between operators and excavators;
2. Fosters support and partnership of all stakeholders;
3. Encourages operator's use of performance measures for locators;
4. Encourages partnership in employee training;
5. Encourages partnership in public education;
6. Defines roles of enforcement agencies in resolving issues;
7. Encourages fair and consistent enforcement of the law;
8. Encourages use of technology to improve the locating process; and
9. Encourages use of data analysis to continually improve program effectiveness.

Each state has established laws, regulations, and procedures shaping its state damage prevention program. Since 1995, PHMSA has awarded over $14 million dollars in One Call Grants. PHMSA has also provided over $4 million dollars in SDP grants to 30 distinct state organizations since 2008. Eligible grantees include state one call centers, state pipeline safety agencies, or any organization created by state law and designated by the Governor as the authorized recipient of the funding. The results of these grants are extremely encouraging and PHMSA commends the states that have received these grants and are working to strengthen their damage prevention laws and programs.

C. PHMSA ENSURES OPERATORS MAKE THE PUBLIC AWARE OF THEIR OPERTIONS.

To address public awareness requirements, in May 2005, a Final Rule was issued that required each operator of a gas or hazardous liquid pipeline to develop and implement a written public continuing education program. These programs are required to follow the guidance of the

American Petroleum Institute (API) Recommended Practice (RP) 1162, "Public Awareness Programs for Pipeline Operators." This RP was developed with participation from all relevant stakeholder groups, including PHMSA, and is based on the knowledge and experience of various pipeline safety and communication experts. PHMSA has incorporated this recommended practice by reference, into its regulatory program under 49 CFR 192.616 and 49 CFR 195.440. The public can view and download an electronic copy of RP 1162 by visiting API's website. Pursuant to this requirement, pipeline operators are required to provide the affected public with information about how to recognize, respond to, and report pipeline emergencies. The regulations also address specific outreach requirements that operators must meet in targeting educational messages to emergency officials, local public officials, and excavators.

In June 2005, PHMSA issued Advisory Bulletin (ADB-06-02) requesting pipeline operators to submit their written public awareness programs to the PHMSA Public Awareness Program Clearinghouse for review. A team of PHMSA's CATS representatives compared these programs with the program requirements using criteria developed by PHMSA and its state pipeline safety partners. Since the adoption of the public awareness requirements into the PHMSA regulations, federal and state inspection staff has been reviewing public awareness elements during standard pipeline inspections. These inspections generally include a review of the written programs and/or a review of records verifying program implementation.

In June 2010, PHMSA and its state partners held a public awareness workshop to review the initial four-year public awareness implementation cycle to understand industry's implementation strategies and challenges. In the second half of 2010, state and federal inspection programs are specifically evaluating operator public awareness program effectiveness. The results of these inspections, along with knowledge gained from the public awareness workshop will be used to refine PHMSA's program to evaluate operator public awareness programs. PHMSA will also prepare an advisory bulletin, develop detailed guidance for pipeline safety inspectors, and prioritize inspections of public awareness programs based on pipeline mileage by operator and the type of commodity transported. In addition, PHMSA will ensure that public awareness programs include provisions for outreach to 911 operators.

D. PHMSA ALSO ENSURES STATES HAVE TECHNICAL ASSISTANCE TO PARTICIPATE IN PIPELINE MATTERS.

PHMSA encourages communities to take part in efforts to develop technical solutions for environmental and emergency planning, zoning, and land use management near pipelines, and to prevent damage to pipelines. PHMSA created the Technical Assistance Grant (TAG) program to provide grants to local communities and organizations for technical assistance related to pipeline safety issues. Technical assistance is defined as engineering or other scientific analysis of pipeline safety issues. The funding can also be used to help promote public participation in official proceedings.

In 2009, PHMSA selected 21 communities and organizations to receive funding through the agency's TAG program. Grants totaling $1 million were used to foster open communication between the public and pipeline operators on pipeline safety and environmental issues and perform other important tasks. Examples of such projects include the use of geographic information systems for enhanced pipeline monitoring and technical aspects of public awareness campaigns to promote the sharing of information between pipeline operators and landowners.

Each technical assistance grant recipient must provide a report to PHMSA within one year of its award demonstrating completion of the work as outlined in its grant agreement. PHMSA is thoroughly overseeing this process and will evaluate the expected outcomes of each grant recipient. PHMSA's CATS representatives will offer their technical support to communities and organizations as well to address pipeline safety questions that may arise during the course of the grant agreement period.

E. PHMSA IS ALSO TRYING TO HELP LOCAL COMMUNITIES MAKE WISE LAND USE PLANNING DECISIONS RELATING TO PIPELINES.

PHMSA has also taken steps to promote recognition of land use planning issues related to development near transmission pipelines. In 2000 to 2001, PHMSA undertook research and solicited input on how to communicate pipeline risks to communities. From this came the idea of developing guidance for communities regarding land use and development near transmission pipelines. PHMSA initiated a cooperative agreement with the Transportation Research Board (TRB) of the National Academies to undertake the study. That agreement was later modified to meet the Pipeline Safety Improvement Act of 2002 requirements for PHMSA to address pipeline encroachment. The results were published in TRB Special Report 218 in October 2004 and included several recommendations for PHMSA related to the development of risk-informed land use guidance. PHMSA initiated PIPA to address the TRB recommendations. Similar to the 1999 Common Ground Study that later resulted in the establishment of the CGA, PIPA is a collaborative effort by stakeholder representatives utilizing a consensus process to identify and recommend practices related to "risk-informed" planning for land use and development around transmission pipelines. PIPA consists of approximately 130 stakeholder representatives of the pipeline industry, local city and county governments, the public, developers, fire marshals, and state and federal regulators. PHMSA anticipates the stakeholders will complete their recommended practices at the time of the publication of the PIPA Final Report which is expected in August 2010.

PHMSA has conducted other activities to inform the public and engage interest and participation in all of its initiatives. PHMSA funded publicly accessible internet broadcast viewing of two pipeline events sponsored by the Pipeline Safety Trust, including a focus on safer land use planning. PHMSA has entered into multiple cooperative agreements with professional associations of county and city government officials to represent their communities and the public interest in PIPA.

F. PHMSA MAKES PIPELINE INFORMATION READILY AVAILABLE TO THE PUBLIC.

A companion effort is helping communities understand where pipelines are located, who operates them, and what other information is available for community planning. PHMSA works with the Department of Homeland Security's Transportation Security Administration to resolve concerns about sensitive security information. Vital information that communities need for land use, environmental, and emergency planning around pipelines is now publicly available through PHMSA's National Pipeline Mapping System (NPMS). The NPMS is a geospatial dataset containing the nation's hazardous liquid and gas transmission pipelines, liquefied natural gas facilities, and a partial dataset of breakout tanks. NPMS data is used for regulatory support, inspection planning, trending and analysis, mapping, emergency response support, and to allow the general public to view pipelines in their area. PHMSA continues to work with states, industry, and other stakeholders to make the NPMS information more accurate and useful.

PHMSA is improving efforts to reach the public by providing local officials with public education resources within communities so citizens can learn how they can protect themselves and pipelines. PHMSA CATS representatives provide pipeline safety information to citizens and advise local officials who then are able to make informed decisions about local land use. PHMSA also utilizes the Internet to give citizens and other stakeholders instant access to community specific pipeline information on our stakeholder communications website. Stakeholders can view incident, accident, and enforcement data to help ensure pipeline safety in their communities. PHMSA has used its website and databases to provide on-the-spot enforcement information to stakeholders. The web site provides public access to a variety of incident and accident data and reports and information about the pipeline safety enforcement program. The site provides year-by-year reports on cases initiated and closed, the status of different types of enforcement cases, and reports on civil penalty cases showing the amounts proposed, assessed, and collected. Information and documents on individual cases are also provided. These documents include the initial notices that allege operator violations or inadequacies; operator responses to these allegations; and the orders documenting PHMSA's final determinations. In addition, PHMSA updates enforcement information on a monthly basis. Use of the enforcement transparency web site has climbed steadily since its inception in May 2007 and averaged more than 1,500 hits per day in 2009. In 2010, PHMSA expanded and improved the information on civil penalty cases and began displaying enforcement data from state pipeline safety agencies as well.

G. PHMSA PREPARES FIRST RESPONDERS FOR PIPELINE FAILURES.

Finally, in the event of a pipeline incident, PHMSA takes its relationship with the first responder community seriously. PHMSA provides training material to assist responders to safely and effectively handle a pipeline emergency. PHMSA has supported the National Association of State Fire Marshals (NASFM) and the first responder community through the development and dissemination of *Pipeline Emergencies 101* training materials for firefighters. In addition, PHMSA has worked with the International Association of Fire Chiefs and NASFM to address gaps in knowledge so that emergency responders know which tools are most effective, including responses to biofuel incidents. PHMSA is currently working with NASFM to revise the curriculum of *Pipeline Emergencies 101*.

II. RESPONDING TO CURRENT CHALLENGES.

While PHMSA is gearing up to deal with the new challenges, the agency is continuing to exert vigilant and visionary leadership to remain steps ahead of the pipeline safety issues it is faced with today. PHMSA has accomplished many goals with its state partners. At the same time however, it is important that states continue to recognize the role that effective and fair enforcement plays in reducing excavation damage to underground infrastructure. Strong, balanced, and effective enforcement needs to be a part of all damage prevention laws. Some states are lacking when it comes to state damage prevention laws by not specifically addressing enforcement or by not permitting civil penalties for violations of state laws. The continued usage of exemptions in state one call laws is another area of concern. In order for one call laws to be truly effective and fair, all underground utilities, one call centers, locators and excavators must play by the same rules. The use of exemptions allows for preferential treatment to a group of stakeholders and allows them to play by separate rules. To address these issues, PHMSA is developing a rulemaking to pursue administrative civil penalties against excavators who violate damage prevention requirements and damage a pipeline in the absence of effective enforcement by the state where it occured. The hope is that this rulemaking, along with all the other current public awareness, education and damage prevention initiatives, will highlight the importance for all stakeholders to call 811 before digging, respect the marks identifying the locations of underground utilities, and practice safe digging techniques.

In closing, PHMSA looks forward to increasing its public awareness and damage prevention programs as they mature and yield results. With this in mind, PHMSA will continue to look at performance measures and ways it can improve the data that it collects. While PHMSA's expanded partnerships with state and local officials are helping to strengthen the effectiveness of safety and prevention efforts, we look forward to working with Congress to further enhance public education, awareness, and damage prevention for pipelines.

Thank you. I would be pleased to answer any questions you have.

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Subcommittee on Railroads, Pipelines, Hazardous Materials
Questions for the Record
Hearing on "Pipeline Safety: Public Awareness and Education (7/21/2010)
Questions for The Honorable Cynthia L. Quarterman (PHMSA)

QUESTION 1: Recent statistics indicate that states are responsible for pipeline safety covering over 92% of 2 million miles of gas distribution pipelines in the nation, 29% of 300,000 miles of gas transmission pipelines, and 32% of 170,000 miles of hazardous liquid pipelines that would otherwise be inspected by PHMSA. How does PHMSA work with its state partners to ensure consistent and effective oversight?

RESPONSE 1:

PHMSA works with its state partners to ensure consistent and effective oversight by annually coordinating inspection programs and areas of inspection/enforcement focus; conducting joint training for all federal and state inspectors; and participating in monthly coordination calls with the leadership of the National Association of State Program Representatives (NAPSR). PHMSA also carries out annual on-site evaluations of state programs in which it reviews state procedures and records and observes field inspection activities to ensure they are aligned with federal program objectives.

QUESTION 2: The Pipeline Safety Improvement Act of 2002 (Public Law 107-355) required each owner or operator of a gas or hazardous liquid pipeline facility to carry out a continuing program to educate the public on the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event. Congress also required each owner or operator of a gas or hazardous liquid pipeline facility to review, within 12 months after the date of the enactment of the 2002 law, its existing public education program for effectiveness and modify the program as necessary. However, in the 2005 rulemaking, PHMSA gave pipeline operators until June 2006 to review and modify their program and until June 2010 to determine their effectiveness. Congress provided a year; PHMSA took eight years to implement the mandate. Can you please explain why PHMSA took so long to comply with the statute? And why PHMSA chose to give operators so long to comply with the public education programs?

RESPONSE 2: I have reviewed the history of PHMSA's compliance with Congress' public awareness mandate and determined that the previous administration simply did not make this a priority. The following is a summary of significant actions taken by PHMSA:

- PHMSA required operators to evaluate and report on their public education programs by December 17, 2003. Specifically, PHMSA required operators to acknowledge the requirements of the PSIA and existing pipeline safety regulations and to use the guidelines in API Recommended Procedure 1162 (RP 1162), the industry standard for public awareness efforts, as the baseline for their programs. PHMSA drafted an evaluation and reporting form and developed a web-based method for operators to complete the forms online. Two workshops were held in September 2003 to introduce RP 1162 to operators and to test the draft evaluation and reporting form.

- PHMSA issued an Advisory Bulletin in a Federal Register Notice on November 25, 2003, reminding pipeline operators that they must evaluate and report on their public education programs by December 17, 2003, to meet the deadline established in the PSIA. The aggregate statistical results of those reports are available at http://primis.phmsa.dot.gov/edu/RP1162/SA_Statistics_050704.pdf.
- After reviewing the operator reports, PHMSA promulgated a final rule on operator public awareness programs that was published in the Federal Register on May 19, 2005. The final rule required operators in existence on June 20, 2005, to complete written public awareness programs by June 20, 2006. The rule contained an exception for operators of small propane distribution systems with fewer than 25 customers and master meter operators with fewer than 25 customers, which were required to complete their programs by June 20, 2007. Upon request, operators were required to submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate state agency. Operators that were required to complete their programs by June 20, 2006, are required to complete their program effectiveness evaluations by June 20, 2010.

QUESTION 3: Since enactment of the Pipeline Safety Improvement Act of 2002, how many inspections has PHMSA conducted to determine the effectiveness of the public awareness programs developed by pipeline operators?

RESPONSE 3: The vast majority of pipeline operators were required to have completed their initial program effectiveness reviews by June 20, 2010. PHMSA is currently working with its state pipeline safety regulatory partners to develop a program for public awareness effectiveness inspections and will begin conducting these inspections later this year. I have mandated that all operators be inspected. These inspections include a review of the written programs and/or a review of records verifying program implementation. The regulations require operators to evaluate their program for effectiveness at four-year interval, with the first evaluation due in June 2010.

QUESTION 4: Has PHMSA ever taken enforcement action against a pipeline company for failing to implement an effective public education program as prescribed by regulation? If so, please provide us with a detailed summary of each action.

RESPONSE 4: Yes. Since 2000, PHMSA has taken enforcement action against a pipeline company for failing to implement an effective public education program on 80 occasions. Table 1 provides a complete listing of these actions, which include issuing warning letters, compliance orders, notices of amendment, and civil penalties. PHMSA proposed civil penalties, totaling $183,500, in six of these cases.

The most significant of these enforcement actions arose from the investigation of a failure of the Mark West pipeline in Ivel, Kentucky, on November 8, 2004. PHMSA alleged that the operator's public education program was inadequate because it did not enable the public in the pipeline area to recognize a hazardous liquid pipeline emergency and report it to the operator or the fire, police, or other appropriate officials. Residents had observed propane leaking from the pipeline but did not recognize this as an emergency. Immediate recognition and reporting might have prevented or reduced some of the injuries that occurred. PHMSA proposed a $142,500 civil penalty for this violation. Since this case is still open, no penalty has been assessed or collected to date.

Examples of the type of probable violations of the regulations and program inadequacies cited in other cases include the following:

- Failure to produce a documented public awareness program.
- Failure to include a portion of an operator's pipeline system assets in a public awareness program.
- Failure to conduct a public awareness program in languages commonly understood by a significant number of the non-English speaking population in the pipeline's vicinity.
- Including information in a public awareness program that was generic and not specific to the operator's pipelines.
- Public awareness programs were found to be inadequate for the following reasons:
    - Message delivery frequency was not specified;
    - There was no documented process to disseminate information;
    - They did not follow API Recommended Practice 1162 for target distribution of materials;
    - They did not define the public awareness program coverage area;
    - They did not include provisions on informing the public and other stakeholders (such as those involved in excavations) how to recognize and respond to pipeline emergencies;
    - Education materials did not identify damage prevention steps to stakeholders; and
    - They did not include procedures for maintaining records for the public awareness program.
- Implementation of public awareness programs was found inadequate for reasons such as:
    - The failure to develop affected stakeholder lists;
    - The failure of operator outreach to reach its required coverage area;
    - The failure to meet the required message distribution frequency; and
    - The failure to communicate with emergency responders.

PUBLIC AWARENESS PROGRAM PROBABLE VIOLATIONS OR PROGRAM INADEQUACIES CITED IN PHMSA ENFORCEMENT ACTIONS FROM 2000 THROUGH JULY 31, 2010 – TABLE 1

Operator	Case Open Date	Enforcement Action	Civil Penalty Proposed[1]
Mardi Gras Pipeline, LLC	7/9/2010	Notice of Amendment	N/A
Buckeye Partners, LP	4/15/2010	Warning Letter	N/A
AmeriGas Eagle Propane LP	2/11/2010	Notice of Amendment	N/A
Holly Energy Partners - Operating, L.P.	1/20/2010	Notice of Amendment	N/A
Tri-states NGL Pipeline LLC	1/13/2010	Warning Letter	N/A
Enterprise Products Operating LLC	1/12/2010	Warning Letter	N/A
Marysville Hydrocarbons	12/23/2009	Compliance Order	0
Plains Exploration & Production Company (PXP)	11/9/2009	Warning Letter	N/A
Bridger Pipeline LLC	9/1/2009	Compliance Order	0
BP Pipeline (North America)Inc.	7/16/2009	Warning Letter	N/A
Breitburn Energy Corp	1/8/2009	Notice of Amendment	N/A
Barrow Utilities & Electric Corp	12/31/2008	Notice of Amendment	N/A
Tampa Bay Pipeline Co.	5/7/2008	Compliance Order	0
Tampa Bay Pipeline Co.	5/7/2008	Compliance Order	0
Vectren Energy Delivery of Ohio	3/19/2008	Warning Letter	N/A
Tampa Bay Pipeline Co.	3/14/2008	Notice of Amendment	N/A
Ozark Gas Transmission System	10/3/2007	Notice of Amendment	N/A
Duke Energy Kentucky - Liquid	6/21/2007	Compliance Order	0
Duke Energy Ohio - Liquid	5/21/2007	Compliance Order	0
Nippon Oil Exploration USA Limited	5/3/2007	Notice of Amendment	N/A
Arc Terminals	3/12/2007	Notice of Amendment	N/A
Jayhawk Pipeline LLC	2/26/2007	Notice of Amendment	N/A
Butte Pipeline Co	2/8/2007	Warning Letter	N/A
Belle Fourche Pipeline Co	2/2/2007	Warning Letter	N/A
Bridger Pipeline LLC	2/2/2007	Warning Letter	N/A
Missouri Interstate Gas LLC	8/17/2006	Notice of Amendment	N/A
ExxonMobil Pipeline Co	6/16/2006	Notice of Amendment	N/A
Markwest Energy Appalachia, LLC	6/15/2006	Civil Penalty	$142,500
City of Vernon	6/6/2006	Compliance Order	0
ConocoPhillips	3/23/2006	Warning Letter	N/A

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[1] Civil penalties are not applicable to Notices of Amendment and Warning Letters.

[2] Compliance Progress File (CPF) number is PHMSA's unique identifier assigned to each case.

Operator	Case Open Date	Enforcement Action	Civil Penalty Proposed[1]
BP Pipeline (North America) Inc.	3/7/2006	Warning Letter	N/A
Panhandle Eastern Pipeline Co	2/27/2006	Warning Letter	N/A
El Paso Natural Gas Co	2/9/2006	Notice of Amendment	N/A
Indiana Gas Co Inc	11/9/2005	Warning Letter	N/A
Danville, City of	11/4/2005	Notice of Amendment	N/A
Linn Western Operating, Inc	10/26/2005	Warning Letter	N/A
Bridger Pipeline LLC	9/27/2005	Warning Letter	N/A
Tampa Bay Pipeline Co.	9/12/2005	Notice of Amendment	N/A
Tampa Bay Pipeline Co.	9/12/2005	Warning Letter	N/A
Coffeyville Resources Crude Transportation, LLC	6/15/2005	Warning Letter	N/A
Enterprise Products Operating LLC	6/13/2005	Notice of Amendment	N/A
Nustar Terminals Operations Partnership L. P.	3/31/2005	Notice of Amendment	N/A
Charlottesville, City of	3/18/2005	Notice of Amendment	N/A
ConocoPhillips	3/14/2005	Warning Letter	N/A
BOC Gases	3/4/2005	Warning Letter	N/A
Tesoro - High Plains Pipeline Company	1/20/2005	Civil Penalty	$5,000
Sunoco Pipeline L.P.	9/22/2004	Warning Letter	N/A
Bentley & Laing	9/20/2004	Compliance Order	0
Ozark Gas Transmission System	5/26/2004	Notice of Amendment	N/A
Richmond, City of	3/18/2004	Notice of Amendment	N/A
Nustar Pipeline Operating Partnership L.P.	12/11/2003	Warning Letter	N/A
Coalinga, City of	11/28/2003	Compliance Order/Civil Penalty	$1,000
USG Pipeline Company	9/18/2003	Warning Letter	N/A
Mid - Valley Pipeline Co	8/26/2003	Civil Penalty	$15,000
Air Products & Chemicals Inc	6/13/2003	Notice of Amendment	N/A
Magellan Pipeline Company, LP	5/6/2003	Notice of Amendment	N/A
Montana Refining Company, Inc	3/6/2003	Notice of Amendment	N/A
Montana Refining Company, Inc	3/6/2003	Warning Letter	N/A
Inland Paperboard and Packaging, Inc	2/12/2003	Warning Letter	N/A
Mississippi River Transmission Corp	1/21/2003	Compliance Order	0
Equilon Enterprises LLC dba Shell Oil Products US - Shell AV	8/22/2002	Civil Penalty	$10,000
Venoco, Inc	8/19/2002	Warning Letter	N/A
Shell Pipeline Corp	8/14/2002	Warning Letter	N/A
Fairbanks Natural Gas	8/1/2002	Warning Letter	N/A
Intermountain Gas Co	3/6/2002	Compliance Order	0

Operator	Case Open Date	Enforcement Action	Civil Penalty Proposed[1]
TPM, Inc	1/29/2002	Warning Letter	N/A
Delaware Terminal Co	1/22/2002	Notice of Amendment	N/A
Dakota Gasification Company	8/16/2001	Notice of Amendment	N/A
West Virginia Oil Gathering	8/15/2001	Warning Letter	N/A
West Virginia Oil Gathering	8/15/2001	Notice of Amendment	N/A
Ergon Trucking, Inc.	5/23/2001	Warning Letter	N/A
Progress Energy	12/7/2000	Warning Letter	N/A
Columbia Gas Transmission Corp	8/25/2000	Civil Penalty	$10,000
Key Pipeline Limited	6/30/2000	Warning Letter	N/A
Southern California Edison Co	6/9/2000	Warning Letter	N/A
Papco Inc	5/30/2000	Warning Letter	N/A
Lion Oil Trading & Transportation, Inc	5/12/2000	Notice of Amendment	N/A
Kinder Morgan GP, Inc.	5/5/2000	Notice of Amendment	N/A
Defense Fuel Supply Center	1/26/2000	Warning Letter	N/A
Colonial Pipeline Co	1/19/2000	Warning Letter	N/A

QUESTION 5: Are you aware of any States that have taken enforcement action against operators for failing to comply with federal regulations regarding public awareness programs? Please provide a list of any States that have taken any enforcement action against a pipeline operator for failing to comply with the Federal regulations regarding public awareness programs. Further, can you provide the type of enforcement action and the amount of fines imposed by the States?

RESPONSE 5: PHMSA does not collect this specific information from states and therefore is not able to provide information on state enforcement actions against operators for failing to comply with public awareness regulations. PHMSA is working with states to overcome resource and technology issues limiting the amount and specificity of information the states can share with the federal program. Each state maintains pipeline oversight records in accordance with its unique state IT system and database protocols. Aggregating data is very difficult when the data comes from different systems, some of which are quite old, and many are incompatible. As a first step toward increased data aggregation capability, PHMSA is currently working with states to establish universal operator identification numbers so that pipeline companies operating in different states can be recognized. PHMSA has provided high level state enforcement data for its enforcement transparency website and like to provide greater detail in the future.

QUESTION 6: How does PHMSA evaluate the effectiveness of the programs? What does PHMSA do to ensure that operators oversee and implement their public education programs in an effective way?

RESPONSE 6: PHMSA and its state pipeline safety partners are currently updating inspection protocols and guidance to evaluate pipeline operators' public awareness program implementation. The inspections beginning this fall will focus on the methods operators used to evaluate their programs' effectiveness, the results of those evaluations, and the steps taken by the operator as a result of the evaluations. PHMSA is also interested to learn if operators are demonstrating continuous improvement by evaluating their programs and improving upon those areas identified as weak or less effective. The effectiveness evaluation will include an assessment of whether pipeline operators have complied with the regulatory requirements for communicating with the affected public, emergency officials, local public officials, and excavators about pipeline systems, potential hazards, and safety around pipelines.

PHMSA issued a Final Rule on May 19, 2005 that required each operator of a gas or hazardous liquid pipeline to develop and implement a written public continuing education program. In June 2005, PHMSA issued Advisory Bulletin (ADB-06-02) requesting pipeline operators to submit their written public awareness programs to the PHMSA Public Awareness Program Clearinghouse for review. The Clearinghouse Review team compared these programs with baseline elements in RP 1162 and worked with operators to resolve deficiencies. The outcome of this first review was that most industry operators had not successfully defined metrics for measuring program effectiveness.

To address this and other issues, PHMSA hosted a public awareness program workshop in 2008 to review findings from the Clearinghouse review of written operator public awareness programs. PHMSA and its state partners also hosted a workshop in June 2010 to learn about the implementation progress and ascertain what is working and not working regarding the use of the RP 1162 for developing, implementing and evaluating public awareness programs. PHMSA is incorporating what we learned from these workshops into our inspection guidance. Federal and state inspectors will use this guidance while conducting focused public awareness program inspections beginning this fall.

QUESTION 7: Following a serious pipeline accident in 2007, the National Transportation Safety Board (NTSB) made Safety Recommendations to PHMSA to initiate a program to evaluate pipeline operators' public education programs, including pipeline operators' self-evaluation of the effectiveness of their public education programs. We understand that PHMSA wanted to wait until after June 2010 to "have a better understanding of the strengths and weaknesses of the existing public awareness requirements after reviewing operator effectiveness evaluations." Has PHMSA reviewed the operator effectiveness evaluations? When and how does PHMSA plan to respond to the NTSB Safety Recommendation?

RESPONSE 7: PHMSA is finalizing inspection guidance and protocols for inspections starting this fall on the operator public awareness effectiveness evaluations. Operators were required to evaluate their public awareness programs for effectiveness by June 20, 2010. PHMSA and its state pipeline safety partners hosted a public workshop in June 2010 to discuss public awareness programs, and PHMSA is incorporating what it learned into its inspection guidance.

On January 29, 2010, PHMSA sent a response to NTSB regarding planned public awareness activities. PHMSA indicated that federal and state inspection programs would be expanded to include effectiveness evaluations in the second half of 2010. PHMSA also indicated that a public awareness workshop (which occurred on June 30, 2010) would be held to discuss with industry and other stakeholders the initial four-year implementation cycle. In addition, PHMSA described its plans to develop detailed enforcement and inspection guidance for inspectors and to prioritize inspections based on pipeline mileage by operator and type of commodity transported.

QUESTION 8: On June 24, 2004, PHMSA published a Notice of Proposed Rulemaking (NPRM) requiring each pipeline operator to develop and implement public education programs based on the provisions of the American Petroleum Institute's Recommended Practice 1162, entitled Public Awareness Programs for Pipeline Operators. In the NPRM, PHMSA states that the American Petroleum Institute's (API) standard was developed "through a formation of a multi-industry task force including representation from hazardous liquid, gas transmission, and gas distribution pipeline operators, as well as trade organizations representing the individual industry segments. Representatives (NAPSR) (representing state pipeline regulatory agencies) participated in meetings and provided input into both the development process and the content of the document." Who made up the "multi-industry task force?"

RESPONSE 8: The task force included representatives from Williams, Shell, Niagara Mohawk, Enbridge, Gulf South Pipelines, Explorer Pipeline, El Paso Pipeline Group, Yankee Gas, Exxon Mobil, Kinder Morgan, Keyspan Energy, and Duke Energy. Also involved in the development of the standard were: the American Gas Association, the American Petroleum Institute, the Association of Oil Pipelines, the Interstate Natural Gas Association of American, the American Public Gas Association, the Northeast Gas Association, the Gas Technology Institute, the National Association of Pipeline Safety Representatives, and PHMSA's predecessor, the Research and Special Programs Administration. The team also reached out to other pipeline safety and public awareness stakeholders for input. Representatives from municipalities in Texas and Virginia, emergency responder and emergency management organizations, the Washington State Citizens Committee on Pipeline Safety, the Washington State Utilities and Transportation Commission, the Common Ground Alliance, and the National Utility Contractors Association met with the task force.

QUESTION 9: When the NPRM was issued, did PHMSA publish the recommended practice in its entirety in the NPRM or in the rulemaking docket so that it could be reviewed by the public? If not, why not?

RESPONSE 9: PHMSA was not able to publish RP 1162 in its entirety in the NPRM or the rulemaking docket because that information is protected by copyright. However, in the interest of maximizing transparency, PHMSA sought and obtained approval from API to make RP 1162 publicly available online in a viewable "pdf" format. PHMSA placed a link to the online copy of RP 1162 on its website, and it is still publicly accessible today at http://mycommittees.api.org/standards/pipeline/1162%20Links/1162nonprintable.pdf.

Recently API announced that it would be making approximately one-third of its standards publicly available and free of charge. PHMSA is in the process of comparing the list of now publicly available standards against those we incorporate by reference.

PHMSA strongly supports public transparency and continually seeks ways of increasing access to oversight information, such as copyrighted standards. Some information is created by or mandated by PHMSA and can be readily shared with the public, such as enforcement information or operator submitted accident reports. These and other information sets are publicly accessible on PHMSA's Stakeholder Communication website: The Stakeholder Communication was designed to provide transparency about the pipeline safety oversight process. PHMSA has posed the question "how can we increase public access to standards incorporated by reference into the regulations" to a various standard setting groups and will continue to work with them to find a solution to the copyright limitations.

QUESTION 10: On May 19, 2005, PHMSA issued a Final Rule on public education programs which once again stated that the programs had to be based on API's Recommended Practice 1162. Did PHMSA publish the recommended practice in its entirety in the Final Rule or in the rulemaking docket so that it could be reviewed by the public? If not, why not? If not, how would a member of the public obtain - today - a *copy* of the standard for review?

RESPONSE 10: Although PHMSA strongly supports open communications with all stakeholders and public transparency of its oversight process, PHMSA was not able to publish

RP 1162 in its entirety in the Final Rule or the rulemaking docket due because that information is protected by copyright. Congress, in passing the National Technology Transfer and Advancement Act of 1995, not only provided agencies with the authority to incorporate technical standards into their regulations, but mandated the practice. The lack of public availability of copyrighted technical standards which are incorporated by reference is a government-wide challenge. As mentioned above, the recommended practice is available for public view via PHMSA's website, at http://primis.phmsa.dot.gov/comm/PublicEducation.htm?nocache=1060, or directly via API's website, at http://mycommittees.api.org/standards/pipeline/1162%20Links/1162nonprintable.pdf.

Further, as required by 49 C.F.R. § 192.7, all materials incorporated by reference in the Pipeline Safety Regulations, including RP 1162, are available for inspection in the Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 205090-0001. Materials incorporated by reference are also filed at the National Archives and Records Administration (NARA), Office of the Federal Register, located at 800 North Capitol Street, NW, Suite 700, Washington, DC 20001, and are available for public inspection and limited copying. Further information on the availability of materials incorporated by reference at NARA is available at 202-741-6030 or at http://www.archives.gov/federal-register/cfr/ibr-locations.html. Finally, a copy can be obtained from API. API's address is 1220 L Street, NW, Washington, DC 20005. Its phone number is 202-682-8000, and its website is www.api.org.

QUESTION 11: API, at the urging of the NTSB, is now revising its standard. What happens when the standard changes? Does it go through the rulemaking process again, because if the underlying standard changes then the regulation changes, isn't that correct?

RESPONSE 11: PHMSA is committed to assuring pipeline safety regulations reflect the highest quality standards and is aware that the API is revising RP 1162 and is providing input to the standards committee. The regulation incorporating RP 1162 does not change if and when the standard changes. The regulation incorporates the current version of the RP 1162, and does not automatically incorporate changes to the RP. Incorporating a newer version of RP 1162 would require a new rulemaking. PHMSA reviews revised industry standards to determine whether incorporation of new versions is appropriate and initiates rulemakings accordingly. For example, on August 11, 2010, PHMSA issued a final rule amending the Pipeline Safety Regulations by incorporating by reference updated versions of 40 industry standards. (See 75 Federal Register 48593.)

QUESTION 12: How much did PHMSA invest in purchasing industry standards on an annual basis in Fiscal Years 2005, 2006, 2007, 2008, and 2009? How much is PHMSA contracting for those standards in 2010? Are these costs considered when an analysis of the rule is being written? What about your enforcement personnel? Do they have to purchase them as well? What about the States? Many of them act as "agents" to enforce Federal standards and regulations. Do they have to purchase them?

RESPONSE 12: PHMSA invested approximately $96,000 in 2005 (ViaData and IHS), $96,537 in 2006 (IHS), $191,647 in 2007 (IHS), $223,243 in 2008 (TechStreet and ASTM), $104,000 in

2009 (TechStreet), and $125,000 in 2010 (TechStreet) on hard copies of and on-line access to the relevant standards. Because they are not significant to the overall cost estimates, these costs are not considered when an analysis of the rule is being written. State pipeline safety partners do not have to purchase standards that are incorporated by reference in the Pipeline Safety Regulations. PHMSA provides on-line access to these standards to its state pipeline safety partners and all PHMSA pipeline safety employees under its contract with FedStar. PHMSA provides state partners and PHMSA personnel with access to numerous other relevant safety standards that are not incorporated by reference. PHMSA is committed to assuring all federal and state inspection and enforcement personnel have access to the best safety standards and technical practices: This information helps them assess whether pipeline companies are making good operational and maintenance decisions.

QUESTION 13: When PHMSA adopts industry standards or adopts recommended practices into regulation, it can cause some confusion and concern as to the distinction between the requirement of abiding by the regulation and the wording of the industry recommendation which uses words like "may" rather than "shall" or "might" or "could" rather than "must". How does an inspector determine the difference between whether they have to abide by the industry, recommendation or not?

RESPONSE 13: Incorporation by reference does not change the meaning of terms contained in an industry standard. Industry standards often contain rules of construction and/or definitions to aid interpretation of the standards. For example, API 1162 defines "may" and "should." Furthermore, 49 CFR § 192.15 sets forth the rules of regulatory construction and defines the terms "includes," "may," "may not," and shall." Operators and inspectors use these sources as guides to interpreting the standards and regulations. Federal and state inspectors are trained side-by-side to appropriately apply these terms. This is a part of the most basic inspection and enforcement training.

QUESTION 14: In the written testimony submitted by the Pipeline Safety Trust, the Trust discusses the creation of Governor-appointed pipeline safety advisory committees to increase public awareness and education and notes that PHMSA has not promoted this as part of their pipeline safety public awareness and education duties. Can you elaborate as to the reasons PHMSA has not embraced this as a tool for public awareness and education?

As information, in the Pipeline Safety Improvement Act of 2002, Congress provided an incentive for states to more actively raise awareness, educate and involve the public. Section 24 of the Act stated:

"Within 90 days after receiving recommendations for improvements to pipeline safety from an advisory committee appointed by the Governor of any State, the Secretary of Transportation shall respond in writing to the committee setting forth what action, if any, the Secretary will take on those recommendations and the Secretary's reasons for acting or not acting upon any of the recommendations."

This paragraph provided the states with an option to not only create an advisory body to better educate and involve the public, but also a route to get timely answers from the Secretary of Transportation to pipeline safety concerns that such an advisory body may have. Unfortunately, this little known option of creating Governor-appointed pipeline safety advisory committees to increase public awareness and education has not been promoted by PHMSA. In fact, a witness on the second panel of the witnesses maintains that in at least one case, PHMSA penalized a state that did create such a committee by refusing to allow federal pipeline safety grant funds to the state to be used to cover the small costs of staffing such a public pipeline safety advisory committee. In addition to addressing the questions above, why did this occur?

RESPONSE 14: PHMSA fully supports governor-appointed state pipeline safety advisory committees. However, the Pipeline Safety Improvement Act of 2002 does not direct the Department of Transportation to cover the costs of these committees, nor were funds appropriated to meet this need. State base grants are used under the terms of a grant agreement to fund state pipeline safety inspection and enforcement programs. PHMSA has agreed, in the case of Washington State, to allow the Washington Utilities and Transportation Committee to use base grant funding to pay for staff to participate on the state pipeline safety advisory committee. PHMSA will provide further support to the extent resources are allocated.

QUESTION 15: What specifically has PHMSA done to make the public aware of the availability of the Community Technical Assistance Grant program? Can PHMSA do something to initiate similar action as it does for the 811 campaign?

RESPONSE 15: PHMSA has worked closely with the Pipeline Safety Trust (PST), a national pipeline safety public advocacy group, over the past two years to educate communities and public advocates about the availability of the Community Technical Assistance Grant (TAG) program. PHMSA also contacted participants of the Pipelines and Informed Planning Alliance (PIPA) initiative, many of whom represent national and local community interests, regarding the permissible uses and availability of the grants. Finally, PHMSA personnel have made numerous presentations about the grants to organizations in 2009 and 2010. These presentations were made at local, state, and regional damage prevention, pipeline safety, and land use planning conferences, the annual Common Ground Alliance conference, and the annual Pipeline Safety Trust conference. The primary vehicles for informing local communities about the "open period" for applying for TAGs has been through the use of the PST email distribution list and by announcing the grants on the federal government's Grants.gov website. PHMSA has witnessed a 71% increase in the number of applications received in 2010 (48 applications) as compared to the first year of the grant program in 2009 (28 applications). We continue to work to identify other venues to advertise the TAG program.

PHMSA will continue to work with the PST to advertise the grants. In addition, PHMSA will work with organizations such as the National Association of Counties, the National League of Cities, the American Planning Association, the National Association of Towns and Townships, and similar community-focused organizations to advertise the availability of the grants. Purchasing advertisement space in these organizations' monthly or quarterly publications may be a useful means of advertising the grant program. Similar grassroots advertising efforts on the part of damage prevention stakeholders has led to increased awareness of the 811 call-before-you-dig telephone number.

QUESTION 16: We understand that PHMSA has Community Assistance and Technical Services (CATS) representatives that serve as the frontline to provide information and education to a wide variety of stakeholders including the general public. How many CATS representatives do you have total? Per region? What do these CATS representatives do?

RESPONSE 16: PHMSA currently has ten Community Assistance and Technical Services (CATS) representatives, two in the Eastern Region, two in the Central Region, three in the Western Region, one in the Southern Region, and one in the Southwest Region. There are also two vacancies, one in the Southern Region and one in the Southwestern Region, and PHMSA is currently recruiting to fill both positions. There is also a CATS Coordinator in Washington, DC, who serves as a conduit of information between the regionally-based CATS Managers and PHMSA headquarters on a variety of regulatory and policy issues.

PHMSA CATS Managers advance public safety, environmental protection, and pipeline reliability by facilitating clear communications among all pipeline stakeholders, including the public, the operators, and government officials. CATS Managers are responsible for:

- Serving as liaisons to the public and helping translate technical pipeline jargon into plain language that a lay person can understand.
- Communicating information to help communities understand pipeline risks and improve pipeline safety and environmental protection.
- Fostering effective communication regarding pipeline safety among PHMSA, other federal agencies, state pipeline safety regulators, elected and emergency officials, pipeline operators, and the public.
- Supporting the Common Ground Alliance (CGA), Regional CGAs, and state damage prevention program grants, to further the implementation of damage prevention best practices.
- Serving as designated PHMSA representatives before a wide variety of stakeholders. CATS Managers routinely provide informational presentations to various stakeholder groups to broaden public awareness of our country's energy transportation pipeline systems.
- Meeting with federal, state, and local regulatory agencies and pipeline operators to facilitate the timely issuance of permits necessary for conducting pipeline integrity activities.
- Providing consultation to regulators, regulated parties, and other stakeholders regarding new and amended regulatory requirements.
- Responding to public inquiries and complaints regarding pipelines and pipeline operations.
- Participating with transmission pipelines and land use planning efforts such as the Pipelines and Informed Planning Alliance.

In addition, they serve as the on-site face of PHMSA in incident response and investigation.

QUESTION 17: A witness from the second panel recommends that one area where PHMSA could go even further in transparency would be a web-based system that would allow public access to basic inspection information about specific pipelines. An inspection transparency system would allow the affected public to review when PHMSA and its state partners inspected particular pipelines, what types of inspections were performed, what was found, and how any concerns were rectified. Is this something you would support? If so, could you provide the committee with PHMSA's approach and timeline?

RESPONSE 17: PHMSA is in favor of providing public access to basic inspection information about specific pipelines and is preparing to introduce a web-based system that will make such information available. This system is an information portal referred to as "Operator Reports," and it will be made available on our Stakeholder Communications website later this year. The tool is meant to integrate with existing incident/accident and enforcement data currently available on the Stakeholder Communications website. The Operator Reports have been specifically designed with the public in mind. The benefit of the Operator Reports is that they allow the user to select a specific pipeline operator and obtain information about where the pipeline operator is located, how many pipeline miles it operates, how much of the pipeline is federally and state inspected, the number and type of inspections PHMSA has conducted of the operator, and any completed enforcement actions against the operator. The tool allows the public to access a specific operator and view information that includes:

- Operator Information
    - The unique Operator ID used by PHMSA to identify each pipeline operator
    - The operator's name
    - System type
    - Total mileage
    - Federally-inspected mileage
    - State-inspected mileage
    - Number of incidents
- States of Operation and Mileage
- Incident and Mileage
    - Mileage by commodity
    - Mileage by state
    - Significant and serious incidents
    - Date of the incident
    - System type
    - State, city and county of the incident
    - Primary cause of the incident
    - Fatalities, injuries and property damage
    - Gross barrels spilled
    - Net barrels spilled
    - Value of lost product
- Federal Inspection and Enforcement
    - PHMSA inspection by PHMSA region, date, type

  - Resulting enforcement action by year initiated, resolved, proposed penalties and corrective action orders issued
  - Enforcement detail by individual case number

Certain pre-decisional information will be protected to protect the due process rights of operators.

It should be noted that some of the above information is already available on PHMSA's Stakeholder Communication website but is intermixed among operators. For example, one Stakeholder Communication webpage provides enforcement details for every case PHMSA initiated in a given year. A search function on another Stakeholder Communication webpage provides information on significant and serious accidents at a national level. The Operator Reports will allow the public to focus on information about a particular operator without wading through information about other companies.

QUESTION 18: PHMSA is encouraged to involve private groups such as the American Petroleum Institute and other industry groups as part of its rulemaking activities and setting standards, but PHMSA is not required to. Please provide a reason why industry standards that are referred to in the Federal Register are not either published in the Federal Register as part of the regulations or available to the public. Anything else is really excluding the public, and especially in this time period when there is a lot of skepticism about private groups with special interests, especially groups dealing with safety in the aftermath of BP and everything else. Will PHMSA make these standards open and available on the Federal Website or another way to alleviate the thousands of dollars that it would take to get the standards? If not, please provide a good legal reason, why it is not within the jurisdiction of the agency to comply with what the Committee is asking in making these standards available to the public either through the Federal Register or through the website.

RESPONSE 18:

PHMSA strongly supports full transparency of its safety oversight processes, it is required to observe and respect the copyright protections for standards it incorporates by reference into its regulations. Accordingly, PHMSA is not permitted to make industry standards available on its federal website. There is no federal law, regulation, or executive order that requires standards incorporated by reference be printed in full text in the Code of Federal Regulations (CFR). Rather, OMB's Circular A-119 directs agencies to observe all copyright rights for materials incorporated by reference. Furthermore, Congress in passing the National Technology Transfer and Advancement Act of 1995 not only provided agencies with the authority to incorporate technical standards into their regulations, but mandated the practice. Additionally, PHMSA publishes a request for comment within the preamble of a Notice of Proposed Rulemaking (NPRM) or Interim Final Rule (IFR) when proposing to incorporate an industry standard by reference. The request identifies the standard, provides a preliminary explanation for the proposed use of a government-unique standard in lieu of an industry standard, and in the event PHMSA proposes to use a government-unique standard and no industry standard has been identified, PHMSA invites the public to suggest an industry standard.

While the standards available to the public either through the *Federal Register* or through the website this material is available to the public for inspection in the Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 205090-0001. Standards incorporated by reference are also filed at the National Archives and Records Administration (NARA) and are available for public inspection and limited copying. Information on the availability of materials incorporated by reference at NARA, is available at 202-741-6030 or at: http://www.archives.gov/federal-register/cfr/ibr-locations.html. Additionally, members of the public may purchase the standards directly from the organizations that publish the standards. Agencies are required to provide a detailed list of the names, addresses and websites for each organization that publish technical standards that have been incorporated by reference into the regulations.[3] Therefore, materials incorporated by reference in PHMSA's regulations are reasonably available to those affected by the regulations because there are three entities from which the materials can be either purchased or examined.

QUESTION 19: Considering the Technical Assistance Grant (TAG) program, does PHMSA believe that the TAG program should be expanded and the maximum amount of funding for each grant be increased? If so, what dollar value does PHMSA believe would be effective to enable the program and awardees to be successful in establishing and carrying out the intent of the program?

RESPONSE 19: PHMSA believes that the TAG program should be expanded only if the maximum amount of funding is increased. Because TAGs are, in part, intended to fund scientific and engineering analyses of pipeline safety issues, PHMSA believes that the $50,000 per-grant limit may not be sufficient for some communities to acquire adequate professional services from technical experts. Technical and scientific consultants and contractors are costly, as demonstrated by the expenses associated with typical research and development projects (which, depending on the subject, may require multi-million dollar funding amounts. Increased funding amounts may result in an increase in the number of applications because communities and organizations would be able to fund needed expertise and assistance.

On a slightly different issue, PHMSA did not receive a large number of applications from communities and organizations proposing work targeted specifically to the types of activities the TAG program was intended to fund. For example, the majority of the applications received in 2010, and many of the applications received in 2009, were from municipal pipeline operators (technically communities which, for the convenience of their citizens, operate a local distribution system) that proposed to carry out activities associated with regulatory compliance and/or typical operations and maintenance. While municipal operators are technically eligible for funding, only activities related to engineering or other scientific analysis of pipeline safety issues or to help promote public participation in official proceedings are eligible for funding. Better advertising of the next solicitation for grant applications may result in increased numbers of applications from eligible parties proposing work that is better aligned with the intent of the TAG program.

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[3] 1 C.F.R. § 51.9; *see* 49 C.F.R. § 192.7 for a list of organizations that publish standards incorporated by reference into the Pipeline Regulations.

QUESTION 20: Will PHMSA develop a plan to evaluate the effectiveness of the TAG program? If so, what will it entail and how will PHMSA publicize the results to communities that are collocated with pipelines?

RESPONSE 20: The diverse nature of the grant projects makes it difficult to evaluate the effectiveness of the TAG program as a whole, but PHMSA does publicize the resulting grants and follow-on reports. PHMSA evaluates the success of the TAG grants on a case-by-case basis by comparing grant project performance to the original scopes of work described in the grant agreements and to the intent of the TAG program as a whole. The Technical Assistance Grant agreements between PHMSA and grant recipients require grantees to submit progress and financial reports to PHMSA. Further, each grantee is required to identify any lessons learned for use by other communities. The grant agreements and reports are periodically posted to a publicly-available PHMSA website at http://primis.phmsa.dot.gov/tag.

QUESTION 21: In late 2007, PHMSA formed the Pipelines and Informed Planning Alliance (PIPA) with the intent of drafting a report that would include specific recommended practices that local governments, land developers, and others could use to increase safety when development was to occur near transmission pipelines. Can you describe PIPA and provide the Committee with a date as to when we can expect to see that report?

RESPONSE 21: The Pipelines and Informed Planning Alliance (PIPA) initiative is led and supported by PHMSA, and its goal is to develop recommended practices for land use planning and development near transmission pipelines. Approximately 130 stakeholder representatives of the pipeline industry, local city and county governments, the public, developers, fire marshals, and state and federal regulators are participating in the initiative. PHMSA sent the final draft of the PIPA report to the full stakeholder group for final review and comment on August 6, 2010. The recommended practices included in the draft final report were developed through a consensus process and have already been approved by the PIPA stakeholder group. During this final round of review, PHMSA will consider all comments, but will only address significant stakeholder issues or errors contained in the final draft report. PHMSA has requested that all comments be submitted by August 31, 2010, and, depending on the issues identified by the stakeholders, PHMSA anticipates "publishing" the electronic PIPA Final Report on the Stakeholder Communications website during the late fall of 2010.
Major points on the development of the PIPA report include:

- Similar to the 1999 Common Ground Study, PIPA is a collaborative effort by stakeholder representatives utilizing a consensus process to identify and recommend practices related to "risk-informed" planning for land use and development around transmission pipelines.
- During 2008 and 2009, the PIPA task teams met numerous times. Success to date was made possible by the dedication and perseverance of the PIPA participants.
- Issues concerning recommended practices related to consultation and planning zones to be defined by local governments are yet to be resolved.
- The PIPA results are to be published later this year. In the interim, to encourage awareness and adoption of the PIPA recommended practices, PHMSA is presenting information at national and state stakeholder conferences.

- PHMSA will have no authority to require or enforce implementation of the recommended practices. However, PHMSA will promote and support a grassroots effort of communication and awareness education toward adoption of the practices by many stakeholders.

QUESTION 22: The 37th Congressional District of California is crisscrossed by pipelines – according to the National Pipeline Mapping System (NPMS) there are 643.15 total pipeline miles. From 2002 to early 2009, there were a total of 51 pipeline incidents. Given this track record, what actions have been taken to inform residents, who in almost all cases live in a high consequence area (HCA), of the potential dangers pipelines pose? Please also provide me with a summary of these pipeline incidents, including the cause of such incidents.

RESPONSE 22: PHMSA regulations require pipeline operators to implement a public awareness program which incorporates specific provisions of RP 1162. The RP includes specifications for pipeline operators to follow with respect to message content, message delivery method, and frequency of communication for various stakeholder audiences. Awareness of hazards associated with pipeline systems is a baseline message that must be regularly communicated to residents living near pipelines. PHMSA and its state partners verify compliance with this requirement during public awareness inspections.
There were no fatalities or injuries caused by the 51 hazardous liquid accidents reported during 2002-2009 (see Table 2 below). These 51 accidents did result in over $2.8 million of property damage, of which 90% or $2.6 million was incurred due to operator property damages and repair/environmental remediation costs, 7% or $218,000 was public/community losses reimbursed by the operator for emergency response and environmental remediation, and 2% or $44,000 represents the value of the product lost. There were no other public/private property damages reported on these reports. These 51 accidents spilled 4,995 barrels of hazardous liquid, of which 95% or 4,735 barrels were recovered. A single accident in 2002, which was due to incorrect operation, spilled 3,217 barrels and accounted for over 64% of the total volume spilled during the 2002-2009 period. There were no fires or explosions resulting from these 51 accidents.

Summary of Accidents

Cause of Accidents as Reported (2002-2009) 37th Congressional District	Number of Reports	(%)	Property Damages ($)	Spilled Amount (in barrels)	Spilled Recovered (in barrels)	% recovered
CORROSION	**11**	**22%**	**1,264,411**	**235**	**85**	**36%**
EQUIPMENT	**21**	**41%**	**165,876**	**762**	**735**	**97%**
INCORRECT OPERATION	**12**	**24%**	**266,523**	**3674**	**3637**	**99%**
MATERIAL AND/OR WELD FAILURES	3	**6%**	**811,411**	**131**	**118**	**90%**
OTHER	**4**	**8%**	**356,526**	**193**	**160**	**83%**
Grand Total	**51**	**100%**	**2,864,747**	**4995**	**4735**	**95%**

HAZARDOUS LIQUID PIPELINE ACCIDENTS REPORTED TO PHMSA
37TH CONGRESSIONAL DISTRICT 2002-2009 – TABLE 2

	Operator Name	Accident Date	Accident County	Property Damage Reported ($)	Spilled Volume (in barrels)	Recovered Volume (in barrels)	Cause of Accident As Reported
1	SFPP L.P.	4/20/2002	CARSON	1224	1	0	EQUIPMENT
2	BP WEST COAST PRODUCTS L.L.C.	5/5/2002	CARSON	42000	4	4	INCORRECT OPERATION
3	SOUTHERN CALIFORNIA EDISON CO	5/17/2002	CARSON	1273	20	20	EQUIPMENT
4	SOUTHERN CALIFORNIA EDISON CO	6/24/2002	COMPTON	0	2	2	EQUIPMENT
5	KINDER MORGAN LIQUID TERMINALS LLC	8/27/2002	CARSON	39790	3217	3217	INCORRECT OPERATION
6	TOSCO DISTRIBUTION WEST	9/28/2002	CARSON	10000	5	5	CORROSION
7	KINDER MORGAN LIQUID TERMINALS LLC	11/30/2002	CARSON	3713	3	1	EQUIPMENT
8	KINDER MORGAN LIQUID TERMINALS LLC	2/2/2003	CARSON	2133	1	0	INCORRECT OPERATION
9	KINDER MORGAN LIQUID TERMINALS LLC	6/16/2003	CARSON	5090	3	0	EQUIPMENT
10	GATX TERMINALS CORP	10/31/2003	CARSON	27645	10	5	CORROSION
11	KINDER MORGAN	11/22/2003	CARSON	991	0	0	EQUIPMENT

	Operator Name	Accident Date	Accident County	Property Damage Reported ($)	Spilled Volume (in barrels)	Recovered Volume (in barrels)	Cause of Accident As Reported
	LIQUID TERMINALS LLC						
12	SHELL PIPELINE CO., L.P.	1/26/2004	CARSON	8000	10	1	EQUIPMENT
13	BP WEST COAST PRODUCTS L.L.C.	2/3/2004	LONG BEACH	35000	6	0	CORROSION
14	SHELL PIPELINE CO., L.P.	6/1/2004	CARSON	170200	15	2	CORROSION
15	SFPP L.P.	7/11/2004	CARSON	5516	0	0	EQUIPMENT
16	KINDER MORGAN LIQUID TERMINALS LLC	8/3/2004	CARSON	83298	655	650	EQUIPMENT
17	SHELL PIPELINE CO., L.P.	9/20/2004	CARSON	11058	1	0	CORROSION
18	KINDER MORGAN LIQUID TERMINALS LLC	10/12/2004	CARSON	11283	4	0	EQUIPMENT
19	SFPP L.P.	12/19/2004	CARSON	333	0	0	EQUIPMENT
20	SFPP L.P.	1/6/2005	CARSON	75209	3	0	MATERIAL AND/OR WELD FAILURES
21	SFPP L.P.	2/22/2005	CARSON	173333	25	0	OTHER
22	SHELL PIPELINE CO., L.P.	3/21/2005	CARSON	61440	165	157	OTHER
23	SFPP L.P.	5/2/2005	LONG BEACH	609202	125	115	MATERIAL AND/OR WELD FAILURES
24	PACIFIC	8/17/2005	LONG	2000	0	0	CORROSION

	Operator Name	Accident Date	Accident County	Property Damage Reported ($)	Spilled Volume (in barrels)	Recovered Volume (in barrels)	Cause of Accident As Reported
	TERMINALS LLC		BEACH				
25	PACIFIC TERMINALS LLC	9/8/2005	COMPTON	3000	5	5	EQUIPMENT
26	KINDER MORGAN LIQUID TERMINALS LLC	11/18/2005	CARSON	77634	126	89	INCORRECT OPERATION
27	KINDER MORGAN LIQUID TERMINALS LLC	12/8/2005	CARSON	2462	3	2	EQUIPMENT
28	SFPP L.P.	5/26/2006	LONG BEACH	32937	27	27	INCORRECT OPERATION
29	SFPP L.P.	6/9/2006	LONG BEACH	520	0	0	EQUIPMENT
30	PACIFIC PIPELINE SYSTEM LLC	6/9/2006	LONG BEACH	1090	0	0	EQUIPMENT
31	PACIFIC TERMINALS LLC	8/9/2006	LONG BEACH	0	50	50	EQUIPMENT
32	KINDER MORGAN LIQUID TERMINALS LLC	8/15/2006	CARSON	5029	0	0	INCORRECT OPERATION
33	SFPP L.P.	9/11/2006	CARSON	120500	0	0	OTHER
34	PACIFIC TERMINALS LLC	10/5/2006	COMPTON	39100	1	1	INCORRECT OPERATION
35	KINDER MORGAN LIQUID TERMINALS LLC	11/8/2006	CARSON	7620	2	2	INCORRECT OPERATION
36	SFPP L.P.	11/28/2006	LONG BEACH	5030	0	0	INCORRECT OPERATION

	Operator Name	Accident Date	Accident County	Property Damage Reported ($)	Spilled Volume (in barrels)	Recovered Volume (in barrels)	Cause of Accident As Reported
37	KINDER MORGAN LIQUID TERMINALS LLC	2/7/2007	CARSON	10250	4	4	INCORRECT OPERATION
38	SFPP L.P.	2/26/2007	LONG BEACH	127000	3	3	MATERIAL AND/OR WELD FAILURES
39	KINDER MORGAN LIQUID TERMINALS LLC	3/20/2007	CARSON	45115	2	2	CORROSION
40	SFPP L.P.	4/8/2007	LONG BEACH	8209	2	2	EQUIPMENT
41	KINDER MORGAN LIQUID TERMINALS LLC	6/25/2007	CARSON	35118	2	2	CORROSION
42	PACIFIC PIPELINE SYSTEM LLC	6/28/2007	LONG BEACH	1253	3	3	OTHER
43	KINDER MORGAN LIQUID TERMINALS LLC	1/16/2008	CARSON	863275	190	65	CORROSION
44	KINDER MORGAN LIQUID TERMINALS LLC	1/20/2008	CARSON	5000	291	291	INCORRECT OPERATION
45	KINDER MORGAN LIQUID TERMINALS LLC	1/22/2008	CARSON	14537	0	0	EQUIPMENT
46	EXXONMOBIL OIL CORP - WEST COAST	2/6/2008	CARSON	18000	1	1	CORROSION

	Operator Name	Accident Date	Accident County	Property Damage Reported ($)	Spilled Volume (in barrels)	Recovered Volume (in barrels)	Cause of Accident As Reported
47	EXXONMOBIL OIL CORP - WEST COAST	2/13/2008	CARSON	47000	3	3	CORROSION
48	BP WEST COAST PRODUCTS L.L.C.	6/11/2008	SIGNAL HILL	0	1	1	INCORRECT OPERATION
49	BP WEST COAST PRODUCTS L.L.C.	12/7/2008	SIGNAL HILL	0	1	1	EQUIPMENT
50	PACIFIC PIPELINE SYSTEM LLC	12/10/2008	LONG BEACH	9692	1	0	EQUIPMENT
51	PACIFIC TERMINALS LLC	3/17/2009	LONG BEACH	5645	0	0	EQUIPMENT

QUESTION 23: Section 15 of the Pipeline Safety Improvement Act of 2002 required operators of pipeline facilities (except distribution lines and gathering lines) to submit to the Secretary of Transportation certain data appropriate for use in the National Pipeline Mapping System (NPMS). What measures are in place to ensure compliance? Is there verification that the system is currently complete and that all pipelines have been mapped?

RESPONSE 23: PHMSA verifies compliance with National Pipeline Mapping System (NPMS) by comparing NPMS submissions with operator annual report data, past NPMS submittal data, and information from PHMSA field personnel. We have a core analytical group that works to identify large discrepancies in mileage reported in an operator's annual report and NPMS submittal, and that contacts operators to determine if their NPMS submissions should be adjusted. The NPMS submission tracking database is reviewed annually to identify operators who have not resubmitted data during the past 12 months as required by the Pipeline Safety Improvement Act (PSIA) of 2002. Noncompliant operators are contacted, and nonresponsive operators may receive a Notice of Probable Violation. The NPMS database is also being compared with the inspection unit descriptions used by PHMSA regional staff to describe inspection boundaries in order to identify any gaps in the NPMS data.

QUESTION 24: The "PHMSA Pipeline Safety Program One Call Grant" has a maximum amount request of $50,000 per State. Do you think this should be increased? Does it make sense to place the same funding limit on California as a state like Rhode Island?

RESPONSE 24: PHMSA believes that the maximum request per state should remain the same. All 50 states have one-call programs, and funding for PHMSA's one-call grant program is only $1 million. With the current maximum set at $50,000, all states received some funding. PHMSA based the maximum permitted request amount on last year's recommendation of the National Association of Pipeline Safety Representatives (NAPSR) Grant Allocation Committee.

QUESTION 25: The Pipeline and Hazardous Materials Safety Administration (PHMSA), as a result of the September 11th terrorist attacks, has restricted access to certain NPMS data to Federal, State, and local government agencies (including emergency responders). Still, PHMSA provides a webpage for the public to obtain State information, including who operates pipelines in their area and contact information for those pipeline operators. Given the potential threat to the U.S. pipeline infrastructure posed by terrorist, should any further security measures be taken, or are the current ones adequate? How does PHMSA balance the need for public information and the need for security?

RESPONSE 25: PHMSA believes that current security measures are adequate but that they should be reviewed annually.

After the September 11th, 2001, attacks, PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA), restricted access to the National Pipeline Mapping System (NPMS). Since then, RSPA (and now PHMSA) has worked with the Transportation Security Administration and the Department of Homeland Security to achieve the correct balance between the need to provide public information on pipelines and the need to protect national security.

The National Pipeline Mapping System (NPMS) is a tool developed to help program officials and pipeline operators determine areas that are unusually sensitive to environmental damage. NPMS data can be of great value to the public. For example, it can help emergency responders and land use planners. However, this data could also be used by people seeking to do harm to the United States. After September 11, RSPA restricted access to certain NPMS data. It determined which data, or "attributes," to restrict based on the conclusion of a RAND Corporation study carried out in the mid-1990s. RSPA shielded the data of most potential value to terrorists and kept less sensitive data public.

PHMSA has continued to work with the Transportation Security Administration's Pipeline Security Division to evaluate which data should be restricted and which should be made public. PHMSA has also conferred with State and local government officials and underground damage prevention center operators on how best to share pipeline data.

QUESTION 26: How many States have exempted themselves from the 811 notification requirements? Do they have to notify PHMSA when this is done? If not, do you think they should have to?

RESPONSE 26: No states have exempted themselves from incorporating 811 as the "call before you dig" number. However, each state provides exemptions from the one-call process. These include exemptions from the notification requirements before digging and exemptions for facility owners from membership in the one-call organization. State DOTs are sometimes exempted under either or both of these categories. States are not required to notify PHMSA of the specific exemptions contained within their respective one-call laws. PHMSA is currently compiling information on these exemptions. Information about state one-call laws and regulations, including exemption information, will soon be publicly available through our Stakeholder Communications web site. Many states are currently working to revise their one-call laws, and PHMSA has increased its efforts to help states improve and strengthen those laws through meetings, letters of support, and presentations.

States should be required to notify PHMSA about exemptions from their one-call requirements because PHMSA believes that unwarranted exemptions have the potential to compromise the effectiveness of states' damage prevention program. PHMSA issued an ANPRM on October 29, 2009, in which it solicited comments on whether states should require all excavators and operators to participate in one-call and avoid giving unwarranted exemptions (74 FR 55801-55802). This rulemaking will establish criteria for the effectiveness of state damage prevention enforcement programs in these areas.

BEFORE THE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS
U.S. HOUSE OF REPRESENTATIVES

NATIONAL ASSOCIATION OF PIPELINE SAFETY REPRESENTATIVES

TESTIMONY OF MASSOUD TAHAMTANI
DIRECTOR, DIVISION OF UTILITY AND RAILROAD SAFETY
VIRGINIA STATE CORPORATION COMMISSION

Tyler Building
1300 East Main Street, 4th Floor
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July 21, 2010

NATIONAL ASSOCIATION OF PIPELINE SAFETY REPRESENTATIVES

TESTIMONY OF MASSOUD TAHAMTANI

BEFORE THE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS
U.S. HOUSE OF REPRESENTATIVES

JULY 21, 2010

Introduction

Chairwoman Brown, Ranking Member Shuster, members of the Committee, thank you for the opportunity to discuss our role in support of education and public awareness as related to reauthorization of the pipeline safety law. This law contains necessary protections that our nation depends on to maintain safety in its energy pipeline network. I am pleased to testify on behalf of the National Association of Pipeline Safety Representatives (NAPSR) and in support of our member states' efforts, as well as in support of the partnership with the Secretary of Transportation to fulfill the mandates of the Pipeline Safety Act.

The States and Pipeline Safety

States act as certified agents for implementing, ensuring and enforcing federal safety regulations, working in partnership with the Secretary.

State pipeline safety personnel represent more than 80 percent of the state/federal inspection workforce. State inspectors are the "first line of defense" at the community level to promote pipeline safety, underground utility damage prevention, education and public awareness regarding gaseous and liquid fuel pipelines.

Enhancing Pipeline Safety

Ever since the Pipeline Safety Act was signed into law in 1968 and now, since the passage of the last reauthorization via the PIPES Act in 2006, states have been working with in partnership with the Secretary in fulfilling the mandates of the resulting law. This is being accomplished in a two-pronged approach: (1) on mandates that are simple to carry out, processes are put in place that can yield immediate safety benefits (e.g., increased levels of enforcement); and (2) on multi-faceted mandates (e.g. public education and awareness), states work with the federal government, and where appropriate, with private stakeholders, to concentrate on developing practical, effective and affordable solutions to implement the various aspects of such mandates. Although such efforts take more time, the result is a carefully crafted, sensible approach that is more likely to achieve the intent of the legislative mandate.

Essential to the federal-state partnership in this area are the pipeline safety program managers in each of 52 state agencies which are members of NAPSR. In addition to their intensive inspection oversight work schedules, many take extra time to address areas of concern in meeting the existing challenges of new initiatives and proposals for recommended improvements to pipeline safety. NAPSR currently has members on 29 task groups, with representatives from 33 states working with the DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) on key safety elements of the pipeline safety program. One of these task groups is the PHMSA-sponsored Public Awareness Programs (PAP) Ad Hoc Task Group made up of government personnel only. With their knowledge and experience about conditions in their states, NAPSR members provide unique and valuable expertise to this task group. The group is charged with the duty to develop documents for use by state inspectors in verifying the operators' compliance with the PAP requirements in the pipeline safety code in USC 49, Part 192 which was amended following passage of the PIPES Act in 2006. The focus is to develop consistent inspection requirements that will be understood by all affected stakeholders and to be able to develop a way to assess the effectiveness of the PAP rule on a nationwide basis.

The perspective of NAPSR in the remainder of this testimony mainly addresses pipeline systems and operators under state jurisdiction. The responsibility for state pipeline safety programs is carried out by approximately 325 qualified engineers and inspectors in the lower 48 states, District of Columbia and Puerto Rico. Recent statistics indicate that states are responsible for pipeline safety covering over 92% of 1.9 million miles of gas distribution piping in the nation, 29% of 300,000 miles of gas transmission and 32% of 166,000 miles of hazardous liquid pipelines. State personnel in 11 states also act as "interstate agents", inspecting interstate gas and liquids pipelines that would otherwise be inspected by PHMSA. In their role as inspectors, state pipeline safety personnel interact with a variety of population densities and population segments which make up the target audiences that are potentially affected by the pipelines of an estimated 3,000 operators subject to the requirements of the PAP regulation.

What Has Been Done to Date

To date states have been engaged in two distinct efforts: (1) Education of the public about gas and hazardous liquids pipelines and how to prevent excavation damage, and (2) Inspection of operators' PAP plans and results, as well as continuing to work with PHMSA in developing inspection protocols for in-depth review of operator education and public awareness programs, so that overall an assessment can be made of the effectiveness of such programs.

With the first effort, given that excavation damage is the number-one cause of pipeline incidents, states have been very active in educating those who excavate near buried facilities in their state. This has been made possible by the federal One-Call Grant Program and by the State Damage Prevention Program Grant which are awarded yearly to qualifying states. With the aid of such grants, state pipeline safety programs have also been in the forefront of promoting the 811 nationwide number to be called before any excavation. For example, during April 2010, designated as National Safe Digging Month, 40 states took actions to highlight the need to call 811 before beginning an excavation. Such action included proclamations by State governors, press releases or public service announcements.

In my own State of Virginia, we routinely sponsor public service announcements about excavation damage prevention and offer a mandatory educational program as an alternative for certain violators of the State's excavation damage prevention statute. In addition, we annually distribute hundreds of thousands of educational materials ranging from coloring books for young Virginians, to safe digging manuals for professional excavators.

Many states have regional damage prevention councils where state pipeline safety personnel participate in promoting damage prevention education and awareness.

Regarding inspections of PAP programs and results, thus far, states have primarily concentrated on determining the adequacy of these programs. In order to evaluate the effectiveness of these programs, added work by the States and PHMSA is under way.

What Remains to Be Done

NAPSR is working with PHMSA by way of the PAP Ad Hoc Task Group to develop an inspection form and associated guidance for use by inspectors to verify if a pipeline operator's PAP is effective in conveying the appropriate messages to the target audiences. Given the subject matter, with abstract concepts and subjective features, one of the challenges facing the group is the ability to stiffen or freeze the subjective features and qualifiers into a set of clear requirements understood by everyone affected by them, without ambiguity.

Further, the inspection process cannot be so complex or so protracted that it will impose an inordinate burden on the inspector to arrive at his/her findings. This aspect must be considered, since normally an inspection process of a pipeline system operator entails verifying numerous components of pipeline safety, of which the PAP is just one component. In other words, the practical aspects of an inspection must be considered when crafting an inspection protocol for state programs to carry out with the resources they have at hand.

The challenging issues to be resolved include but are not limited to verification of execution of plan elements while eliminating inconsistencies among inspectors, and avoidance of areas of contention between the inspector and the pipeline operator. This has taken time and it is not for lack of effort by us or by our federal partner.

In short, we are looking for effective PAP plans by the operators within limits of what is practical and affordable. For example, although there have been recommendations that 100 percent of the members in a target audience be reached as part of the education or public awareness effort, we question whether this is achievable in all situations within practical and affordable bounds. A "statistically valid" percentage would be more realistic in some cases, while in others, specific members of a target audience must be sought and educated.

Considering affordability of these plans is also very important. Our State pipeline safety program offices are typically integrated into State commissions, which are responsible for ensuring reliable delivery of the product at reasonable rates. Obviously, highly elaborate PAP plans will place unreasonable burden on rate payers.

With these efforts under way, we need additional time to verify if the existing legislative mandate and its regulatory offspring addressing education and public awareness is working to enhance safety. We believe that this is a good mandate that has already shown positive results by those operators that have been proactive. We have mapped out a plan and a path forward with our federal partner, PHMSA, to ensure such verification within a reasonable amount of time. At this point, added legislative amendments in this area are not warranted and could create additional obstacles in helping operators to implement effective public awareness programs.

Conclusions

Programs mandated by the last three pipeline safety reauthorizations have required and continue to require extensive additional state efforts to address safety in areas that include but are not limited to operator qualification requirements, gas transmission and liquids pipeline integrity, excess flow valve installation, pipeline control room management, distribution system integrity, excavation damage prevention, and education and public awareness communications. These mandates still need a number of years to show their intended results. A hiatus in added legislative mandates would be beneficial by allowing the regulators to focus on the effectiveness of existing mandates without detriment to safety.

Like you, we understand the importance of our mission to the safety of our citizens, energy reliability and continued economic growth of our Nation.

Thank you.

Massoud Tahamtani
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Virginia State Corporation Commission
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NAPSR
National Association of Pipeline Safety Representatives

August 20, 2010

The Honorable Corrine Brown
Chair
Subcommittee on Railroads, Pipelines, and Hazardous Materials
U. S. House of Representatives
Washington, D.C. 20515

Dear Ms. Brown:

Attached is our response to your letter of August 11, 2010. We hope it answers your questions.

Per instructions in your letter, this response is being sent via e-mail to Ms. Jennifer Esposito.

If you have further questions or concerns, please do not hesitate to contact me or George Mosinskis. I can be reached by phone at 804-371-9264 or via e-mail at massoud.tahamtani@scc.virginia.gov . George can be reached at 703-504-8778 or via e-mail at gmosinskis@cox.net .

Sincerely,

Massoud Tahamtani
NAPSR Member and Past Chair of Legislative Committee
c/o Virginia State Corporation Commission
Division of Utility and Railroad Safety
1300 East Main Street
Richmond, VA 23119

Attachment

NAPSR
08/19/10

Reply to Congresswoman Corrine Brown's August 11, 2010 Letter to Massoud Tahamtani

Question 1

Recent statistics indicate that states are responsible for pipeline safety covering over 92% of 2 million miles of gas distribution piping in the nation, 29% of 300,000 miles of gas transmission and 32% of 170,000 miles of hazardous liquid pipelines. State personnel in 11 states also act as "interstate agents", inspecting interstate gas and liquids pipelines that would otherwise be inspected by PHMSA. What is your relationship with PHMSA? Can you describe how you coordinate and work together? Are there areas that can be improved?

Answer:

The relationship of State pipeline safety programs and PHMSA is one of a successfully working, strong partnership. State agencies have jurisdiction over most gas, hazardous liquid, and carbon dioxide facilities within their respective States. State agency duties normally consist of inspections of safety record, facilities, and construction activities; compliance and enforcement; accident investigations, and other safety programs. Participating State programs are enabled by Federal law (49 USC Chapter 601, Sections 60105 and 60106) to carry out pipeline safety assurance work that would otherwise have to be done by PHMSA.

State programs are often represented on task groups formed by PHMSA to address items such as data collection, operator reporting requirements, the basis for rulemakings, inspection forms, and guidance for compliance verification. States are also frequent contributors of comments on proposed rules when a Federal rulemaking is formally initiated. While States understand that ultimately the decision on a rule or policy provision is exclusively within the Federal authority, by taking advantage of the substantial expertise and field experience of the States, the quality of Federal actions can be improved and PHMSA is able to address critical diversity aspects that could otherwise be overlooked. Through the National Association of Pipeline Safety Representatives (NAPSR) State programs work with PHMSA to ensure reasonable and effective pipeline safety enhancements are promulgated.

As for coordination of the work between a State agency and PHMSA, under a *certification*, the State pipeline safety programs assumes inspection and enforcement responsibilities with respect to intrastate facilities over which it has jurisdiction under State law. With a certification, the State may adopt additional or more stringent standards for intrastate pipeline facilities provided such standards are compatible with Federal regulations. To qualify for Section 60105 of Chapter 601 gas or hazardous liquid certification, the State must meet the requirements outlined in that section.

Under an *agreement* or *interstate* agent agreement, a State program agrees to also conduct inspections of interstate pipeline facilities on behalf of PHMSA and reports inspection results to PHMSA for compliance or enforcement actions as necessary. To qualify for a Section 60106 agreement, the State must meet Federally specified training requirements for State inspection personnel and must also fulfill the requirements outlined in Section 60106. State programs are required to investigate reported safety-related conditions, monitor operator actions to remedy such conditions, and provide status reports to PHMSA. In addition, States agree to assume responsibility for and carry out inspections as mutually agreed with PHMSA, follow PHMSA guidelines on incident coordination and investigation; follow requirements and formats for reports; maintain inspection and accident records; and, in consultation with PHMSA, handle inquiries and release information.

PHMSA may also call upon the State agency to assist in performing a variety of duties on an ad hoc basis. This assistance may include inspection of specific operators, inspection of construction, witness to repairs and testing, or investigation of incidents/accidents. In some cases, PHMSA's request may involve immediate deployment of State agency staff. To expedite the process, PHMSA will contact the State agency's program manager to request that the State agency act on behalf of PHMSA. A letter may be prepared formalizing the details of the arrangement complying with applicable parts of the interstate agent agreement.

Communications and coordination of these pipeline safety efforts take place on a regional level within the PHMSA organization, and under the review of each PHMSA region director.

Under a certification, agreement, or interstate agent agreement, the State may not subcontract pipeline safety-related work activities without prior approval from PHMSA. If the State no longer wishes to apply for annual certification or agreement, all inspection and compliance activities for intrastate facilities revert back to PHMSA.

When a need for training of State personnel on some aspect of pipeline safety is identified, PHMSA takes on the task of providing such training.

As for areas of the relationship between States and PHMSA needing improvement, communications between both partners is an area that can continuously be improved, and for that matter, is constantly being worked on by both sides, thanks to the strong relationship that has been established over the years. For example, some time ago, NAPSR had expressed a need for transparency in examining incident data collected by the Federal database. PHMSA responded by beginning the creation of the "Data Mart System", a web based access system allowing a number of queries to be made for specific information a State needs concerning its operators. PHMSA "Forums" was another website set up by PHMSA to allow States to communicate with each other and with PHMSA about safety issues that may be common to more than one State. NAPSR provides input to PHMSA on proposed Federal regulations that may impact safety and State resource requirements. NAPSR also adopts resolutions that often suggest some specific action by PHMSA on pipeline safety-related matters. PHMSA responds to such resolutions on a yearly basis. NAPSR works with PHMSA in an effort to arrive at effective and practical ways of evaluating State pipeline safety performance and the allocation of Federal grant funds. The more we understand each other's motivations and action drivers, the better the result of our joint efforts.

Question 2

Despite the Federal one-call grant Program, excavation damage remains the number-one cause of pipeline incidents. As we look to reauthorize the pipeline safety program, do you have any recommendations of how Congress could address this further?

Answer

The first recommendation would be that Congress continue authorizing and appropriating the necessary funding for state pipeline safety grants under 49 USC Section 60107 and also for the State One-Call Grant program and the State Damage Prevention Grant program which can provide support in additional areas not covered by the One-Call grants program. To this end, we recommend that this Congressional committee include increased authorizations for funding of these programs to $2 million per year for One-Call Grants and $2.5 million per year for State Damage Prevention Grants over the next four years.

The second recommendation is that a federally sponsored study be conducted to determine if any of the current exemptions to the States' One-Call laws are reasonable. States understand that there are often sound practical reasons for allowing some entities or activities to remain exempt, and that carefully targeted exemptions do not necessarily increase the risk of excavation damage. Data on exemptions are being collected as noted in our answer to Question 6 below. A study would use information including this data to formalize any findings for future actions.

Question 3

In your testimony, you mention that "a hiatus in added legislative mandates would be beneficial by allowing the regulators to focus on the effectiveness of existing mandates without detriment to safety." Can you please elaborate on this?

Answer

As Stated in our testimony, programs mandated by the last three pipeline safety reauthorizations have required and continue to require extensive additional efforts by State pipeline safety personnel to address areas that include but are not limited to operator qualification (OQ) requirements, gas transmission and liquids pipeline integrity (TIMP), excess flow valve installation (EFVs), pipeline control room management/human factors (CRM), distribution system integrity (DIMP), education and public awareness communications programs (PAP), and excavation damage prevention enforcement. Some of the mandates include actions to compile and evaluate additional data to verify if such mandates are effective.

To implement the mandates of the Congressional reauthorizations of the pipeline safety law, a two-pronged approach is used: (1) on mandates that are simple to carry out, processes are put in place that can yield immediate safety benefits (e.g. increased levels of enforcement transparency); and (2) on multi-faceted mandates, such as those enumerated above, States work with the Federal government, and where appropriate, with private stakeholders, to develop practical, effective and affordable solutions to implement the various aspects of such mandates. Although such efforts take more time, the result is a carefully crafted, sensible approach that is more likely to achieve the stated goals of the legislative mandate.

Multi-faceted mandates such as PAP still need a number of years to show if they are providing the intended results. PAP involves about 3,000 operators. Mandates such as DIMP and CRM are in the beginning stages of their implementation and again, will need a number of years to show if they are effective in enhancing pipeline safety. DIMP may involve as many as 9,000 operators. Enforcement of damage prevention laws in the States received an impetus with the PIPES Act of 2006 and has given rise to a number of State efforts focusing either on existing enforcement authority or to change the State law to authorize such enforcement. This will be "bootstrapped" with the Federal enforcement authority rule being currently crafted by PHMSA with State pipeline safety program input.

States feel that additional amendments to such mandates at this time would not be productive because they could complicate and delay efforts that are currently underway. Furthermore, added legislative mandates aimed at onshore pipeline safety at this time would have to be coupled with added State resources, which are hard to come by especially during the hard economic times most States are experiencing.

Question 4

State budgets remain tight and in the past year some states furloughed employees for selected periods of time. Can you elaborate on the impacts of State budget issues to your pipeline safety program as well as other states that are members of NAPSR?

Answer

Recently NAPSR conducted a survey which showed that out of 48 States that responded, 32 had budget cuts in the form of mandatory work furloughs, across-the-board percent cuts, or both. The percent cuts range between 3 and 25 percent, depending on the State. Such cuts involve loss of experienced personnel through early retirement, hiring freezes, deferred equipment purchases (e.g. vehicles used for field inspections beyond useful life), travel restrictions to educational classes (in some cases, no out-of-state travel), or/and salary cuts or frozen salaries.

The impact of these measures is that the number of inspections may be reduced, areas covered during an inspection of an operator may be cut back, and/or efforts at risk prioritization may mean some operators escape inspection for overlong periods. Areas like improving excavation damage prevention may suffer because awareness activities or the number of events investigated may have to be reduced. The net impact could be a decreased level of pipeline safety.

Suspension by PHMSA of the requirement for maintaining the State funding portion at the previous 3-year average, as required in section 49 USC Section 60107, is helping to relieve some of the impact of the above cuts in CY 2009 through added Federal grant funding. However, due to the slow recovery in the economy of many States, the suspension will be needed for more years to help mitigate the effects of the cuts. This is critically needed especially in the face of added Federal mandates such as DIMP and CRM that must soon be implemented. Faster availability of such funds from PHMSA would ensure that States can put added resources in place when they are most needed.

Question 5

How do you determine a pipeline operator's public education or awareness plans are effective? How is that evaluated?

Answer

The specifics on how to verify the effectiveness of an operator's public awareness plan are being currently worked out by a government-only task group consisting of PHMSA and State members representing NAPSR. As stated in our testimony, the task group is addressing challenges such as ensuring that the requirements to be verified during inspections are clearly understood by all affected parties, that inconsistencies between inspectors are minimized, and that the required public awareness plans by the operators are within limits of what is practical and affordable, both to the State's ratepayers and to the inspecting agency.

On an overall basis, a determination of effectiveness of an operator's program involves verification through feedback from the target audience about understanding the message provided by the operator. Using such feedback, the operator then computes the percentage of the target audience that has received and understood the message enough to be able to take the necessary action. Results from a recent PHMSA-sponsored workshop on Public Awareness programs revealed that the target audience hardest to survey is the non-gas customer group, which can make up to 50% of the affected public. Because surveying this group can be highly resource-intensive, some operators have formed collaborating consortia to carry out the feedback surveys from non-customers. In addition, a review of one-call center data and damage data by the operator can be very helpful to determine the effectiveness of that operator's program.

An inspection form and associated guidance are being developed by the government group mentioned above to allow verification of the effectiveness of an operator's program.

Question 6

How many States exempted themselves from the 811 notification requirements, which states are they, and what years did they establish those exemptions?

NAPSR
08/19/10

Answer

To our knowledge, no States have completely exempted themselves or any class of operators or excavators from the 811 notification requirements. We are anecdotally aware of difficulty by a few local telephone providers in adapting their systems for 811 service, but this was not due to any State exemption. As noted in response to Question 2 above, some State laws may contain exemptions from participation in the One-Call process, including exemptions from the notification requirements before digging and exemptions for facility owners from membership in the One-Call organization. This may include entities within local and State government bodies. States are working with PHMSA in compiling information about State One-Call laws and regulations, including information on exemptions. Many States are currently working to revise their One-Call laws, with support provided by PHMSA when needed.